(14,261.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 246.

FREDERICK W. MUSER, RICHARD MUSER, AND CURT MUSER, PLAINTIFFS IN ERROR,

vs.

DANIEL MAGONE, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, Greeting:

[Seal of U. S. Circuit Court, South. Dist. New York.]

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Frederick W. Muser, Richard Muser, and Curt Muser, plaintiffs, and Daniel Magone, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the part aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and ninety, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 30th day of June, in the year of our Lord one thousand eight hundred and ninety.

JOHN A. SHIELDS, *Clerk.*

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

2 [Endorsed:] E. & A. A., 921. 12564. U. S. Supreme Court. Frederick W. Muser *et al.*, plaintiffs in error, against Daniel Magone, defendant in error. Writ of error. Charles Curie, attorney for plaintiffs in error. Due service of a copy of the within writ of error is hereby admitted this 2d day of July, 1890. Edward Mitchell, U. S. att'y, attorney for defendant in error. R. 1.40, ch's.

[File-mark:] U. S. circuit court. Filed Jul- 2, 1890. John A. Shields, clerk.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three to one hundred and forty-eight, inclusive, contain a true and complete transcript of the records and proceedings had in said

court in the case of Frederick W. Muser, Richard Muser, and Curt Muser, plaintiffs in error, against Daniel Magone, defendant in error, as the same remain- of record and on file in said office.

Seal of U. S. Circuit Court, South. Dist. New York.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 19th day of August, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fifteenth.

JOHN A. SHIELDS, *Clerk.*

3 Superior Court of the City of New York.

FREDERICK W. MUSER, RICHARD MUSER, CURT MUSER, Plaintiffs, against DANIEL MAGONE, Defendant. } Summons No. —.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, June 12th, 1888.

CHAS. CURIE,
Plaintiffs' Attorney,
Offices, No. 44 Exchange Place, New York City.

4 [Endorsed:] N. S. 12564. No. —. N. Y. superior court. Frederick W. Muser & *als.*, plaintiffs, against Daniel Magone, defendant. Summons. Chas. Curie, plaintiffs' attorney, 44 Exchange place, New York city. Received, U. S. attorney's office, Jun- 14, 1888. Due service hereof admitted this 12th day of June, 1888. Personally served Jun- 12, 1888, custom-house, New York.

5 The President of the United States of America to the judges of the superior court of the city of New York, Greeting:

[L. S.] We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Daniel Magone, defendant, by Frederick W. Muser & *als.*, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 30 day of June, 1888, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein,

together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 26 day of June, in the year one thousand eight hundred and eighty-eight.

JOHN A. SHIELDS, *Clerk.*

STEPHEN A. WALKER,
United States Attorney, Attorney for Defendant.

6 [Endorsed:] 12564. U. S. circuit court. Frederick W. Muser & *al. vs.* Daniel Magone. Copy certiorari. Stephen A. Walker, U. S. attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, June 26, 1888. Yours, Stephen A. Walker, U. S. attorney, attorney for defendant. To C. C., plaintiffs' attorney. Due service of a copy of the within and of the above notice is hereby admitted. New York, June, 1888. Chas. Curie, plaintiffs' attorney.

7 Circuit Court of the United States for the Southern District of New York.

FREDERICK W. MUSER, RICHARD MUSER, CURT MUSER, Plaintiffs, *against* DANIEL MAGONE, Defendant. } Complaint.

Plaintiffs complain:

1st. That defendant was during the time hereinafter named collector of customs of the United States at the port of New York.

2d. That plaintiffs were during said times partners in trade under the firm name of Muser Bros., and as such duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. The defendant, as such collector, exacted from plaintiffs, as and for duties thereon, and plaintiffs, in order to obtain said goods, were compelled to pay, and did pay, the sum of two hundred & fifty-eight $\frac{40}{100}$ dollars in excess of the amount required by law.

4th. That plaintiffs filed with said defendant due and timely protests, in writing, upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

5th. That plaintiffs made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of defendant as to certain of said entries, and as to the rest of said entries has neglected to answer said appeals, and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

6th. That the bill of particulars hereto annexed states for each importation separately the date of entry at the custom-house, of the

payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, together with the other particulars required by law, and is made a part hereof.

7th. That said sum so exacted as aforesaid has never been repaid to plaintiffs and is still due and owing to them.

Wherefore plaintiffs demand judgment against defendant for two hundred & fifty-eight $\frac{40}{100}$ dollars, with interest on the several sums named in the bill of particulars from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

CHAS. CURIE,
Attorney for Plaintiffs.

8 [Endorsed:] 12564. U. S. circuit court. Frederick W. Muser & *als.*, plaintiffs, against Daniel Magone, defendant. Complaint. Chas. Curie, plaintiffs' attorney, 44 Exchange place, New York city. Received, U. S. attorney's office, Jun- 28, 1888.

9 *Bill of Particulars.*

Name of importer-, Muser Bros.

		Description of goods.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally exacted.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
					1887.	1887.		1887.	1887.	1887.	1888.
63	1	Cotton embroideries (10 % add.)	Harve...	La Bretagne....	Sept. 17	Oct. 5	53 60	Nov. 29	Dec. 2	Dec. 2	Ap'l 2
	2	Do.	" ...	La Bourgoin....	" 24	" 11	76 80	" 30	" 2	" 2	" 2
	3	Do.	" ...	La Champagne.	" 3	Sept. 19	34 80	" 30	" 2	" 2	" 2
	4	Do.	" ...	La Normandie..	Oct. 22	Nov. 11	72 80	" 26	" 2	" 2	" 2
	5	Do.	" ...	La Normandie..	July 23	Aug. 9	10 40	" 26	" 2	" 2	" 2
	6	Do.	" ...	La Normandie..	Aug. 20	Sept. 7	10 00	" 26	" 2	" 2	" 2

10 [Endorsed:] 12564. U. S. circuit court, southern district of New York. F. W. Muser & *als.* against Daniel Magone. Bill of particulars. New York, June 28, 1888. To Stephen A. Walker, Esquire, defendant's attorney: Sir—Please to take notice that this action is brought to recover duties illegally exacted by the defendant as collector of customs at the port of New York, and the within is the plaintiff's bill of particulars. Chas. Curie, plaintiffs' attorney, 44 Exchange place, New York city. Received, U. S. attorney'- office, June 28, 1888.

11 Circuit Court of the United States for the Southern District of New York.

FREDERICK W. MUSER *et al.*
versus
DANIEL MAGONE, Collector, etc. } N. S. 12564.

The defendant answers to the complaint as follows:

I. He denies that the true duty, or that the true and lawful rate of duty, on the goods referred to in the complaint was as stated in the complaint; and he denies that the plaintiffs were compelled to pay or did pay to the defendant, as collector or otherwise, the sum stated in the complaint or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise, or that the same was paid in order to obtain possession of said goods.

II. He denies that the plaintiffs filed with the defendant any protest or protests, as required by section 3011 of the Revised Statutes of the United States.

III. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiffs.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the times therein mentioned were in fact such goods as are described in the said complaint.

V. And, further answering, he alleges that no protest was filed within ten days after the ascertainment and liquidation of the duties thereon.

VI. And, further answering, he alleges that no appeal was taken to the Secretary of the Treasury within thirty days after the date of the ascertainment and liquidation of duties thereon.

VII. And, further answering, he alleges that this action was not brought within ninety days after the decision by the Secretary of the Treasury on the appeal taken from the ascertainment and liquidation of duties thereon, or within ninety days after payment of duties paid thereon after such decision.

VIII. And, further answering, he alleges that this action was brought without the decision of the Secretary of the Treasury on the appeal from the ascertainment and liquidation of duties thereon having been first had and without ninety days having elapsed from the date of such appeal.

IX. And, further answering, the defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made were demanded of the plaintiffs and were by the plaintiffs voluntarily paid to him in his capacity as collector of customs as and for duties due the United States on imported merchandise, and were forthwith, before the commencement of this action and before the receipt by defendant of any protest or objection on the part of the plaintiffs, paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

X. And, further answering, the defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made were sums due from the plaintiffs to the United States as duties, according to the rate of duty imposed by law, upon articles of merchandise imported by plaintiffs and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs' entry thereof were collected or received by defendant from the plaintiffs.

Wherefore defendant demands judgment, that the complaint be dismissed with costs.

STEPHEN A. WALKER,
United States Attorney, Attorney for the Defendant.

12 [Endorsed:] 12564. U. S. circuit court, southern district of New York. F. W. Muser *et al. vs.* Daniel Magone, collector, etc. Copy. Answer. Stephen A. Walker, United States attorney, attorney for defendant. Sir: Please to take notice that the within is a copy of an answer this day filed in the office of the clerk of the circuit court of the United States for the southern district of New York. Dated New York, December 31, 1888. Yours, &c., Stephen A. Walker, U. S. att'y & att'y for def't. To Charles Curie, Esq., attorney for plaintiffs. Due service of a copy of an answer of which the within is a copy and of the above notice is hereby admitted. Dec. 31st, 1888.

13 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the 6th day of December, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Honorable E. Henry Lacombe, circuit judge.

FREDERICK W. MUSER *et al.*
vs.
DANIEL MAGONE. } N. S. 12564.

Now come the plaintiffs, by William Stanley, Esq., their attorney, and move the trial of this cause.

Likewise comes the defendant, by William Wickham Smith, Esq., United States attorney, his attorney.

Thereupon a jury is empanelled and the cause proceeds to trial.

After hearing the evidence of the plaintiffs and the argument of counsel, the jury, by direction of the court, on the 11 instant, say that they find a verdict for the defendant, and so they say all.

On motion of Stephen G. Clark, Esq., ordered that the
[L. s.] plaintiffs have a stay of sixty days in which to make and serve a case, with leave to turn the same into a bill of exceptions.

An extract from the minutes.

JOHN A. SHIELDS, *Clerk.*

14 United States Circuit Court, Southern District of New York.

FREDERICK W. MUSER *et al.*
vs.
DANIEL MAGONE.
} Judgment, June 24th, 1890.

The issues in this action having been brought on for trial before Mr. Judge Lacombe and a jury, at a circuit court of the October term, 1889, and the issues having been tried, and a verdict for the defendant having been duly rendered on the eleventh day of December, 1889, and his costs having been adjusted at $48.85:

Now, on motion of Edward Mitchell, United States attorney, for defendant—

It is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48.85, his taxed costs, and have execution therefor.

Judgment signed this 24th day of June, 1890.

JOHN A. SHIELDS, *Clerk.*

15 [Endorsed:] 12564. United States circuit court. Frederick W. Muser & *als. vs.* Daniel Magone. Judgment-roll. Edward Mitchell, United States attorney, attorney for defendant. Filed —— —, 188-. Costs, $——. U. S. circuit court. Filed Jun 24, 1890, 4 p. m. John A. Shields, clerk.

16 United States Circuit Court, Southern District of New York.

FREDERICK W. MUSER, RICHARD MUSER, and CURT MUSER
vs.
DANIEL MAGONE.
} Plaintiffs' Bill of Exceptions.

This cause came on for trial before his honor Mr. Justice Lacombe and a jury on the 11th day of December, 1889, and plaintiffs' counsel, to sustain the issues on their part, read in evidence the following invoices and entries produced by defendant, as follows:

ST. GALL., *September 17th*, 1887.

Messrs. Muser Brothers, New York, to Muser Brothers, St. Gall., Drs.

Forwarded via Havre the following goods, sent in 4 cases marked F [MB] No. 7895–'98. All charges not specially enumerated in this invoice, except such as pertain to packing, are included in the price of goods.

7895.

Stitches.	Box.	No.	Repeat price.	Pcs.	Yds.	Anne.			
382	1	26702	¼, 35	70	1,777	1,382¼	Camb. edg. ..	24	331.71
320	23	26695	"	40	1,431	1,113	" ..	19	211.47
340	4	25023	"	32	847⅛	659¼	" ..	20	131.85
315	5	17313	"	32	851⅛	662	" ..	19	125.78
428	6	26710	"	40	1,250⅛	972½	" ..	25	243.06
410	7, 8	26678	"	63	1,696½	1,319½	" ..	24	316.65
554	9	26737	"	30	1,000⅜	778½	" ..	32	249.00
490	10, 11	26769	"	48	857⅛	666¾	" ..	31	206.69
550	12, 13	26569	"	59	1,058⅞	823½	" ..	33	271.75
912	14, 15	26969	"	24	533⅝	415	" ..	52	215.80
655	.....	27012	"	32	860¼	669¼	" ..	39	260.96
587	16	26744	"	40	1,024	796½	" ..	34	270.81
380	17, 18	26542	"	40	534¼	415½	" ..	25	103.87
767	19, 20	26879	"	40	872¾	678⅜	" ..	43	291.70
				590	14,594⅛	11,350⅞	.. ..	....	3,231.10
17		Brought forward							3,231.10
		Bleaching & finishing						165	
		Making up & ornaments						37.50	
									202.50
									3,433.60
		Less 26678, 161 au., 10 % badly worked, 2,438.64							3.86
								Francs..	3,429.75
		(Add to make market value							237.40)

7896.

768	1–2	26992	¼, 35	50	1,055⅝	821	Camb. edg. ..	43	353.03
997	3, 4	26993	"	52	698	542⅞	" ..	56	304.01
1,174	5, 6	26993	"	50	683⅜	531½	" ..	65	345.47
1,122	7	26925	"	28	498⅞	388	" ..	63	244.44
1,166	8	26919	"	32	567½	441½	" ..	65	286.97
1,173	9	26953	"	31	421⅛	327½	" ..	67	219.42
1,166	10	26905	"	30	358	278½	" ..	66	183.81
1,236	11	26895	"	32	430	334½	" ..	69	230.80
1,479	12	27131	"	20	223	173½	" ..	84	145.74
1,646	13	26914	"	24	266¼	207	" ..	92	190.44
1,000	14	24956	"	39	345⅜	268⅞	" ..	60	161.32
459	15, 16	26548	"	60	1,520⅝	1,182¾	" ..	27	319.34
				448	7,068	5,497½ au.			2,984.79
		Bleaching, finishing						123.20	
		Making up & ornaments						28	
									151.20
								Francs..	3,136
		(Add to make market value							217.10)

7897.

Stitches.	Box.	No.	Repeats price.	Pcs.	Yds.	Aune.			
334	1	26698	4/4	50	1,683⅝	1,309¼	Camb. edg. ..	20	261.90
380	2, 3	25539	"	60	1,487⅛	1,164⅜	" ..	22	256.16
1,220	4	26896	"	32	420	5/8	" ..	68	222.10
2,982	5, 6	225 A I	"	30	267⅛	207⅞	Camb. sets ..	1.65	342.79
683	7	225 B	"	42	754¼	586½	Ins.	38	222.87
2,443	8	225 *d*	"	30	265	206¼	Edgs.	1.40	288.57
3,807	9, 11	225 E	"	24	212⅜	165⅛	"	2.15	355.56
5,853	.....	225 F	"	16	141⅜	110¼	"	3.40	374.82
7,211	12	225 G	"	16	142⅛	110¼	"	4.15	458.57
11,992	13	225 H	"	7	34	26½	"	6.50	172.25
858	.....	218 *d*	"	35	572	444⅝	"	46	204.64
6,614	.....	273 O	6/4, 28	1	8⅜	6½	Na-nz'k allover	3.25	21.12
				343	5,998	4,666⅛	.....	....	3,181.35

Bleaching, finishing	127.60	
Making up & ornaments	29	
		156.60
		3,337.95
Less 218 *d*, 133 au., 10 % badly worked, 46 61 18		6.12
	Francs ..	3,331.85
(Add to make market value		230.89)

18 *Recapitulation.*

			Boxes.	Case.
F [MB]	No. 7895	Frcs. 3,429.75	30	
"	7896	" 3,136	25	40
"	7897	" 3,331.85	24	50
"	7898	" 2,488.70	26	65
		Francs 12,386.30		

Case 7897 contained goods not in controversy to the amount of 2,488.70.

Declaration.

I, Ernst Meyer, do solemnly and truly swear that I am the purchaser of the goods, wares, and merchandise in the within invoice mentioned and described; that the said invoice is in all respects true; that it contains a true and full statement of the actual market value of such of said goods, wares, and merchandise as are subject to any ad valorem rate of duty or to any duty regulated or directed by law to be estimated or based upon the value of the square yard or of any other specified quantity or parcel at the time and place when and where the same were manufactured or procured, of the actual quantity of said goods, wares, and merchandise, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice except such as have been actually allowed

thereon, and that no invoice different from the one now produced has been or will be furnished to any one. I further declare
19 that it is intended to make entry of the said goods, wares, and merchandise at the port of New York, in the United States of America.

Signed in triplicate, at (ort) St. Gall., this (datum) September 21st, 1887, of and for (von und fur das Haus) Muser Bros.

E. MEYER.

A declaration similar to the above was on each invoice in evidence.

Also the memorandum prefixed and attached to the invoice by plaintiffs as follows:

Office of Muser Brothers, cor. Broome and Green streets.

NEW YORK, *October* 4, 1887.

Add to make market value—F [MB] # 7895–7897—3 % on frs. 9,813.04, fs. 294.39.

Also the following memorandum attached by the collector:

Appraiser adds to invoice value—

Invoice No. 3064:

For goods not extended, ——.
For goods in excess, ——.
To make market value, ——.
Advance 6 per cent.
Custom-house, N. Y., Oct. 11, 1887.

T. W. S.,
Amendment Clerk.

20 Endorsed: F [MB]. 7896. Case as noted. Add to make market value as noted. Importer's add'n noted. Octo. 7, '87. G. C. T. S. W. Kent. Approved: Lewis McMullen, appraiser.

21 *Merchant's Appraisement Attached to Invoice.*

D. P., Oct. 5, 1887.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE, *Oct.* 24, 1887.

SIR: We have examined a lot of cotton embroidery imported by Muser Bros., in the S. S. "La Bretagne," from St. Gall., Sept. 17, 1887, and do hereby certify that in our opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was and we do thereby appraise the same as follows:

Marks.	Numbers.	Description of merchandise.	Total francs.
F [MB]	7895–'98	Four cases cotton embroidery ... } Cotton emb'd'y as per inv., francs.. }	9,397.24
		Add bleaching and finishing.....	415.80
			9,813.04
		Less allowance for bad work.....	9.98
			9,803.06
		Add 6 %....	588.18
		Francs.....	10,391.24

Bal. not cons'd.

EDW'D E. EAMES,
Merchant Appraiser.

D. P., Oct. 5, 1887.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE, *Oct.* 24, 1887.

SIR: We have examined a lot of cotton embroidery imported by Muser Bros., in the S. S. "La Bretagne," from St. Gall., Sept. 17, 1887, and do hereby certify that in our opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was and we do thereby appraise the same as follows:

Marks.	Numbers.	Description of merchandise.	Total francs.
F [MB]	7895–'98 7895–'7	Four cases cotton embroidery ... Cot. emb'y as per inv., francs.... Add bleaching and finishing.....	9,397.24 415.80
			9,813.04
22		Bro't forward..... Allowance for bad work.....	9,813.04 9.98
			9,803.06
		Add.....	979.78
		Francs.....	10,782.85

Bal. not cons'd.
The collector concurs with the general appraiser.
Dated Nov. 19, '87.

D. MAGONE, *Collector.*

Advance, less than 10 %.
D. N.

W. E. C. U.
Due merchant app'r, $5.

GEO. V. BROWER,
General Appraiser.

Charles Bleidorn, custom-house broker, 25 William street.
Invoice dated Calais, September 21, 1887.

Import Entry of Merchandise Imported by Muser Bros. in the Steamer La Bretagne, Whereof —— —— is Master, Arrived October 2, 1887, from Havre
NEW YORK, *October* 5, 1887.

Marks.	Nos.	Packages & contents.	Quantities.			
D [MB]	4817	One case cotton & silk laces		1,506.60	4,343.90	
		Cost of transportation, shipment, packing, &c		.....	40.95	
				1,506.60	4,384.85	
		Less cost of transportation, shipment, packing, putting up, boxes, tickets, &c		13.00	86.95	
				Frs. 1,493.60	4,297.90	Amend..... 1,552.20
		C. 19.3c		$288.27		Original 1,498.10
		St. Gall., September 17, 1887.				Inc..... 54.10
F [MB]	7895	One case cotton embroideries		3,420.75		
	7896	One " " "		3,136.00		J. J., 2 inc. W. E. C. U.
	7897	One " " "		3,331.85		
	7898	One " " "		2,488.70		
				12,386.30		2,709, 40..... 1,083.60
		Add to make market value 3 % on fs. 9,313.04 (cases F [MB] #7895–'7)		294.39		829, 50..... 414.50
				12,680.69		1,498.10
E. A. Nov. 22, '87.		Less commissions making up and ornaments		138.83		
2,843, 40 ..... 1,137.20				Frs. 12,541.86		
830, 50 ..... 415.00						
1,552.20		C. 19.3c		$2,420.58		
		Amount of first invoice		" 288.27	829.49	
E. P. C. W. E. C. J.				$2,708.85	829.49	MUSER BROS., 463–467 *Broome Street.*

24 ST. GALL., *the 24th September*, '87.

Messrs. Muser Brothers, New York, to Muser Brothers, St. Gall., Drs.

Forwarded, via Havre, the following goods, sent in 5 cases, marked F [MB] No. 7900–'04.

All charges not specially enumerated in this invoice, except such as pertain to packing, are included in the prices of goods.

7900.

Stitches.	Box.	No.	Repeats price.	Pcs.	Yds.	Aune.			
332	1	26697	¾, 35	32	862	670½	Na-na'k edgs..	21	140.81
329	2	27153	"	30	716⅛	557	" ..	23	128.11
414	.....	27016	"	30	790	614½	" ..	26	159.77
390	3	27150	"	32	713½	555	" ..	27	149.85
459	4	26548	"	32	718	558½	" ..	28	156.38
462	5	26883	"	31	682⅜	531	" ..	29	153.99
484	6	26721	"	24	646	502½	" ..	29	145.72
490	7	26725	"	24	537⅝	418⅛	" ..	30	125.47
503	8	26952	"	24	642	499⅛	" ..	30	149.81
504	9	26881	"	32	713⅛	554⅜	" ..	31	171.93
510	10	26868	"	24	537	417¾	" ..	31	129.50
536	11	26734	"	24	538	418½	" ..	32	133.92
554	.....	26939	"	32	698⅛	543	" ..	33	179.19
583	11, 13	26949	"	24	645	501⅝	" ..	34	170.55
644	.....	27019	"	24	645	501⅝	" ..	37	185.60
618	14	26747	"	32	717	557⅛	" ..	36	200.74
612	15	26948	"	20	443⅝	345	" ..	36	124.20
632	16	26887	"	27	484⅛	376½	" ..	38	143.07
762	17	27138	¾, 36	20	446½	347⅛	" ..	46	159.73
807	18	26947	¾, 35	22	403	313½	" ..	46	144.21
849	19	27145	¾, 36	20	446⅝	347⅜	" ..	51	177.16
852	.....	26944	¾, 35	19	390⅛	303½	" ..	49	148.71
1,538	20	26965	¾, 36	12	186⅛	144⅝	" ..	89	128.83
1,852	.....	26978	"	12	168¼	130⅞	" ..	110	143.96
				603	13,769⅜	10,710¼ au.			3,651.21
Bleaching & finishing									173.65
Making up & ornaments									45.30
									218.95
								Francs..	3,870.15
(Add to make market value									267.25)

7901.

4,012	1, 2	4199	⅝, 28	30	267½	208	Camb. allover	1.95	405.60
3,076	3, 5	4203	¾, 35	40	357⅛	277⅞	"	1.90	527.96
5,446	6, 7	4206	"	26	223⅞	174⅛	"	3.10	539.79
238	8, 9	26620	"	50	1,501⅛	1,168⅛	" edgs...	14	163.54
				146	2,350½	1,828⅛			1,636.89
25	Bleaching & finishing								118.80
	Making up & ornaments								27.
									145.80 1,782.69
Less 4206, 3½ au., 10 % badly worked, 310 10.85									1.08
								Francs..	1,781.60
(Add to make market value									122.03)

7902.

Stitches.	Box.	No.	Repeats price.	Pcs.	Yds.	Aune.			
1,166	1	26919	4, 35	32	563¼	438	Cambric edg.	64	280.32
332	2, 3	25554	"	60	1,852⅞	1,441⅛	"	19	273.81
632	4	26971	"	32	997⅛	775½	"	37	286.93
600	5, 6	26951	"	32	991¼	771	"	34	262.14
705	.....	20826	"	37	740⅜	575⅞	"	40	230.35
752	7	27010	"	30	926¼	720⅜	"	43	309.76
701	8	27123	"	40	716¼	557	"	41	228.37
1,054	9, 11	27024	"	36	805⅛	626⅛	"	57	356.89
1,047	11, 12	26909	"	60	626⅜	487⅛	"	60	292.50
1,210	13	26924	"	32	426⅜	331⅝	"	69	228.91
1,852	14	26978	"	16	229⅜	178⅜	"	105	187.29
752	15, 16	26821	"	48	856½	666¼	"	44	293.15
604	17, 18	27444	.....	40	537⅜	418⅛	"	37	154.75
1,214	19, 20	4138	.....	32	283⅜	220½	"	71	156.56
				527	10,552⅞	8,207⅝ au.			3,541.73
Bleaching & finishing								135.30	
Making up & ornaments								30.75	
									166.05
								Francs.	3,707.80
(Add to make market value (257.20)									257.20)

7903.

							Nainzook sets.		
903	1	262 B..	4, 35	42	946⅜	736¾	Edgs.....	51	375.55
1,391	2, 3	262 C..	"	50	623½	485	"	78	378.30
1,872	4, 5	262 D..	"	38	344⅛	267⅞	"	105	281.14
2,335	6	262 E..	"	23	204	158⅝	"	135	214.14
1,361	7	262 AI.	"	28	373¾	290⅝	Ins.....	76	220.68
1,847	8	262 AII	"	20	267⅛	208	"	105	218.40
17,413	9	262 O..	"	13	60½	47	Camb. all-over.	925	434.75
13,640	10	225 O..	"	13	59⅜	46¼	" "	735	340.86
4,346	.....	225 AI.	"	20	175⅝	136¾	Camb. ins..	245	335.04
1,353	11, 12	225 C..	"	50	626⅜	487⅛	" edgs	76	370.21
476	13, 14	4169...	4, 37	36	1,599¼	1,243⅜	" ins..	29	260.69
				333	5,281	4,107⅛			3,529.76
									3,529.76
26	Bleaching, finishing							105.	
	Making up, ornaments							25.95	
									130.95
									3,660.71
	Less—								
262 B, 140 au.,		5%	badly worked				51	71.40	3.57
" B, 210 "		10%	"				51	107.10	10.71
" C, 294 "		5%	"				78	229.32	11.47
" O, 7 "		5%	"				925	64.75	3.24
									28.99
								Francs.	3,631.70
(Add to make market value									251.08)

7904.

							Swiss sets.		
5,925	1, 7	81 SII.	¼, 35	39	346⅝	269½	Skirtgs	3.80	1,024.10
440	.....	81 C...	"	13	177⅜	137⅞	Edgs	.30	41.36
							Camb. edgs.		
1,193	8	26421..	"	20	176	136¾	"	69	94.44
514	9	4104..	"	30	642¼	499½	Ins.....	30	149.85
				102	1,342¼	1,043¾			1,309.75
Bleaching & finishing.....								109.70	
Making up & ornaments.....								28.10	
									137.80
									1,447.55
Less 81 SII, 3½ au., 10 % badly worked, 3.80 13.30.....									1.33
								Francs..	1,446.20
(Add to — market value.....									98.10)

Recapitulation.

			Boxes.	Case.
F [MB] No. 7900	Frcs...	3,870.15	30	50
" 7901	" ..	1,781.60	23	30
" 7902	" ..	3,707.80	31	
" 7903	" ..	3,631.70	24	80
" 7904	" ..	1,446.20	23	30
Francs		14,437.45		

The invoice contained the following endorsement:

F [MB]. 7901. Case as noted. Balance classified. Add in addition to amount added by importer to make market value as noted. Oct'r 14, '87. G. C. T. S. W. Kent. Approved: Lewis McMullen, appraiser.

27 Also the memorandum prefixed and attached to the invoice by plaintiffs as follows:

"OCTOBER 10, 1887.

From Muser Brothers, 465 & 467 Broome street, New York.

F [MB] 7900–7904.

We add to make market value 3 % on frs. 14,311.79, fs. 429.35."

Also the following memorandum attached by the collector:

"Appraiser adds to invoice value—

Invoice No. 6232:

For goods not extended, ——.
For goods in excess, ——.
To make market value, ——.
Advance 7 per cent., ——.
Custom-house, N. Y., Oct. 18, 1887.

T. W. S.,
Amendment Clerk."

28 *Merchant's Appraisement Attached to Invoice.*

D. P., Oct. 10, '87.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE, *Oct.* 28, 1887.

SIR: We have examined a lot of cotton embroidery imported by Muser Bros., in the S. S. "La Bourgogne," from St. Gall., 24 Sept., '87, and do hereby certify that in our opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was and we do thereby appraise the same as follows:

Marks.	Numbers.	Description of merchandise.	Total francs.
F [MB]	7900–'04	Five cases cotton emb'd'y.....	
		Cotton emb'd'y as per inv., francs..	13,669.34
		Add bleaching & fin'g.....	642.45
			14,311.79
		Less badly worked.....	31.40
			14,280.39
		Add 6 %	856.81
		Francs.....	15,137.20

EDW'D E. EAMES,
Merchant Appraiser.

D. P., Oct. 10, 1887.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE, *Oct.* 28, 1887.

SIR: We have examined a lot of cotton embroidery imported by Muser Bros., in the S. S. "La Bourgogne," from St. Gall., 24 Sept., '87, and do hereby certify that in our opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was and we do thereby appraise the same as follows:

Marks.	Numbers.	Description of merchandise.	Total francs.
F [MB]	7900–'04	Five cases cotton embroidery....	
		Cotton emb'd'y as per inv., francs..	13,669.34
		Add bleaching & finishing.....	642.45
			14,311.79
		Less badly worked.....	31.40
			14,280.39
		Add.....	1,425.01
		Francs.....	15,705.40

29 Advance sustained by—

——— ———.

The collector concurs with the general appraiser.
Dated Nov. 19, '87.

D. MAGONE, *Collector.*

Due merchant appr., $5.00.

PHILIP W. DOUNES,
General Appraiser.

Chas. Bleidorn, custom-house broker, 25 William street.
Invoice dated St. Gall., September 24, 1887.

Import Entry of Merchandise Imported by Muser Bros. in the Steamer La Bou-gogne, Whereof —— —— is Master, Arrived October 8, 1887, from Havre.
NEW YORK, *October* 10, 1887.

Marks.	Nos.	Packages and contents.	Quantities.	40.	
F [MB].....	7899	One case cotton embroideries	.....	950.15	E. A., Nov. 19, '87.
	7905	One " "	.....	5,173.20	4,200, 40 %. $1,636.00
				6,123.35	Say 1,680.00
		Less making up & ornaments.....	.....	64.10	W. E. C. U.
				Frs. 6,059.25	M. M. C., 1 inv.
					4,008, 40 .... 1,603.20
		C. 19.3c.....	.....	$1,169.44	P. Oct. 11.
		St. Gall., September 24, 1887.			J. B. G.
F [MB]	7900	One case cotton embroideries	.....	3,870.15	
	7901	One " "	.....	1,781.60	
	7902	One " "	.....	3,707.80	
	7903	One " "	.....	3,631.70	
	7904	One " "	.....	1,446.20	
		Add 3 % on fs. 14,311.79 to make market value.....	.....	14,437.45 429.35	[$3,031]
		(Reappraisement.....	.....	14,866.80	
Amend... 1,680.00 Original.. 1,603.20		Less making up & ornaments.....	.....	15,705.40 157.10	
Inc..... 32.80*				Frs. 14,709.70	
Say..... 76.80					
W. E. C. U.		C. 19.3c.....	.....	$2,838.98	
		Amount of first invoice.....	.....	1,169.44	MUSER BROS.,
				$4,008.42	463, 467 *Broome Street.*

* Erased in copy.

31 ST. GALL., *the 3d September*, 1887.

Messrs. Muser Brothers, New York, to Muser Brothers, St. Gall., Drs.

Forwarded via Havre the following goods, sent in 3 cases, marked F [M B] No. 7883–'85.

All charges not specially enumerated in this invoice, except such as pertain to packing, are included in the price of goods.

7883.

Stitches.	Box.	No.	Repeats price.	Pcs.	Yds.	Aune.			
							Swiss sets.		
918	1	74 B...	¼, 35	18	230⅝	179⅜	Edgs.....	56	100.45
10,012	2, 4	74 S...	¼, 28	39	177½	138⅜	Skirt'g.....	4.85	671.12
1,060	5	21359½.	"	16	213⅝	166¼	Edgs.....	53	88.11
12,537	6, 8	26982..	"	39	177⅜	138¼	Skirts.....	5.85	808.03
				112	799½	622⅛ au.			1,667.71
							Bleaching & finishing.....	106.95	
							Making up & ornaments.....	27.90	
									134.85
									1,802.56

Balance of case, amounting to 795.36, not in controversy.

7884.

Stitches.	Box.	No.	Repeats price.	Pcs.	Yds.	Aune.			
							Na-nzook set.		
518	1	219 B..	¼, 35	40	1,244⅝	968	Edgs.....	31	300.08
835	2	219 C..	"	40	532½	414⅛	"	51	211.20
1,498	3, 4	219 D..	"	32	285⅝	222¼	"	92	204.35
2,291	.....	219 E..	"	24	214¼	166¼	"	1.40	233.10
880	5	219 AI.	¾, 45	21	286	222½	Insert.....	67	149.07
1,410	6	219 AII	"	16	142¼	110½	"	1.10	121.55
9,856	7	219 O..	"	11	52	40½	All over.....	7.05	285.52
							Cambric sets.		
380	.....	217 B..	¼, 35	20	625⅛	486⅛	Edgs.....	24	116.70
876	.....	217 C..	"	28	850⅜	661½	"	49	324.20
1,780	8	217 D..	"	18	396½	308⅜	"	97	299.12
2,684	9	217 E..	"	14	245¼	190⅝	"	1.45	276.41
1,080	.....	217 AI.	"	16	566¼	440¼	Insert.....	58	255.34
1,532	10	217 AII	"	16	496⅜	386	"	82	316.52
388	11	218 B..	"	40	1,245¼	968⅜	Edgs.....	19	183.99
588	12, 13	218 C..	"	40	1,235⅝	961	"	32	307.52
1,398	14	218 E..	"	23	341¼	265⅜	"	75	199.03

Stitches.	Box.	No.	Repeats price.	Pcs.	Yds.	Aune.			
2,208	15	218 F..	¼, 35	20	177⅜	137⅛	Edgs.....	1.20	165.45
774	16	218 AI	"	20	485	377½	Insert.....	41	154.67
1,314	17	218 AII	"	20	348½	270⅜	"	70	189.52
19,164	18	218 O..	"	1	6⅝	5⅛	All over.....	9.95	51.
19,980	.....	" ..	"	8	35	27⅛	"	10.40	283.40
				468	9,811¼	7,630⅜			4,627.74
Bleaching, finishing.....								137.75	
Making up & ornaments.....								38.20	
									170.95
									4,798.69
32									4,798.69
Less—									
218 E,	3½ au.,	10 %	badly worked.....				75	2.62	26
218 F,	7 "	10 %	"				1.20	8.40	84
218 AII,	274 "	20 %	"				70	191.10	38.22
									39.32
								Francs..	4,759.35
(Add to make market value.....									455.02)

Case 7885, amounting to 4,008.90, not in controversy.

Recapitulation.

				Boxes.	Case.
F [M B]	No. 7883.....	Frcs..	2,597.80	31	
"	7884.....	" ..	4,759.35	30	40
"	7885.....	" ..	4,008.90	57	60
		Francs..	11,366.05		

The invoice contained the following endorsement:

F [MB]. 7883. Case as noted. Add to make market value as noted. Importer's add'n noted. G. C. T. S. W. Kent. Approved. Lewis McMullen, appraiser.

Also the memorandum prefixed and attached to the invoice by plaintiffs as follows:

"NEW YORK, *September* 19, 1887.

Office of Muser Brothers, cor. Broome and Greene streets.

Add to make market value 3 % on fs. 6,500.83,
Cases F [MB] 7883–7884,
Numbers 74 B, 26982,
219 B, 218 O, fs. 195.02."

Also the following memorandum attached by the collector:

"Appraiser adds to invoice value—

Invoice No. 12156:
For goods not extended, ——.
To make market value, ——.
For goods in excess, ——.
Advance 9 per cent.
Custom-house, N. Y., Sep. 26, 1887.

T. W. S.,
Amendment Clerk."

33 *Merchant's Appraisement Attached to Invoice.*

EXHIBIT 3, P. L.

D. P., Sept. 19, 1887.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE, *Octo.* 18, 1887.

SIR: We have examined a lot of cotton embroidery imported by Muser Bros., in the S. S. "La Champagne," from St. Gall., Sept. 3, '87, and do hereby certify that in our opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was and we do thereby appraise the same as follows:

Marks.	Numbers.	Description of merchandise.	Total francs.
F [MB]	7883–'5	Three cases cotton emb'd'y.....	1,667.71
Part....	7889	Cot. emb'd'y as per inv.....	
"	7884	"	4,627.74
		Francs.....	6,295.45
		Add bleaching & finishing.....	244.70
			6,540.15
		Allowance.....	39.32
			6,500.83
		Add 6%.....	390.05
		Francs.....	6,890.88

Bal. not cons'd.

EDWARD E. EAMES,
Merchant Appraiser.

D. P., Sept. 19, 1887.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE, *Oct.* 18, 1887.

SIR: We have examined a lot of cotton embroidery imported by Muser Bros., in the S. S. "La Champagne," from St. Gall., Sept. 3, 1887, and do hereby certify that in our opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was and we do thereby appraise the same as follows:

Marks.	Numbers.	Description of merchandise.	Total francs.
F [MB]	7883–'5	Three cases cotton embroidery, &c.	1,667.71
Part....	7883	Cotton emb'd'y as per inv.....	
"	7884	"	4,627.74
		Francs.....	6,295.45
34			6,295.45
		Add bleaching & finishing.....	244.70
			6,540.15
		Allowance.....	39.32
			6,500.83
		Add 10%.....	650.08
		Francs.....	7,150.91

Bal. not cons'd.

A. E.

The collector concurs with the general appraiser.
Dated Oct. 19, '87.

D. MAGONE, *Collector.*

Due merchant appr., $5.

GEO. V. BROWER,
General Appraiser.

Chas. Bleidorn, custom-house broker, 25 William St.

Chas. Bleidorn, custom-house broker, 25 William St.
Invoice dated Calais, September 7, 1887.

Import Entry of Merchandise Imported by Muser Bros. in the Steamer La Champagne, Whereof —— —— is Master, Arrived September 18, 1887, *from Havre.*

NEW YORK, *September* 19, 1887.

4—246

Marks.	Nos.	Packages and contents.	Quantities.	50.	40.	
D [M. B.]	4810	One case silk & cotton laces		4,144.60	34.95	Amend. Nov. 19, '87.
		Cost of transportation, shipment, packing, &c.		45.55		2,163, 40.... 865.20 938, 50.... 469.00
		Less cost of transportation, shipment, packing, putting up, boxes, &c.		4,190.15 100.55	34.95 2.50	1,334.20 Jay. 1,334.20.
				Frs. 4,089.60	32.45	W. E. C. U.
		C. 19.3c.		$789.30	6.27	2 invoices.
		St. Gall, September 3, 1887.				
F [M. B.]	7883	One case cotton & silk embroideries		776.81	1,820.99	938, 50.... 469.00
	7884	One " cotton laces			4,759.35	2,076, 40.... 830.40
	7885	One " " "			4,008.90	1,299.40
		Add to make market value 3 % on frs. 6,500.83 (on numbers 74[B], 26982, 219[B], 218[O]), cases 7883–'4		776.81	10,589.24 195.02	P'd Sept. 20, '87.
				Frs. 776.81	10,784.26	Amend.... $1,334.20
		Less making up, ornaments, &c.		8.25	61.10	Orig..... 1,299.40
				Frs. 768.56	10,723.16	Inc..... 34.80
		C. 19.3c.		$148.33	2,069.57	W. E. C. U.
		Amount of first invoice		789.30	6.27	
				$937.63	2,075.84	MUSER BROS, 463–467 *Broome St.*
Orig..... 1,299.40 Inc..... 34.80 1st am'd.... 1,334.20 2nd " ..... 1,295.30 Ref'd..... 38.90 W. E. C. U.		Re-am. P. & A., Oct. 15, '88, Rt. 778, 35..... 272.30 1,385, 40..... 554.00 938, 50..... 469.00 1,295.30. W. E. C. U.	778 to 35 on P. & A. Reapp..... 7,150.91 Ent'd 4,024.75 11,175.66			P. Nov. 30, '87. Excess of deposits Nov. 3, 1888. refunded.

DANIEL MAGONE, COLLECTOR, ETC.

25

36 ST. GALL., *the 22d October*, 1887.

Messrs. Muser Brothers, New York, to Muser Brothers, St. Gall., Drs.

Forwarded via Havre the following goods, sent in 4 cases, marked F [MB] No. 7947–'50. All charges not specially enumerated in this invoice, except such as pertain to packing, are included in the price of goods.

7947.

Stitches.	Box.	No.	Repeats price.	Pcs.	Yds.	Aune.			
5,019	1, 3	4019½	4/4, 35	30	262⅝	204½	Camb. allovers	2.85	582.11
4,507	4, 6	3769	"	27	238⅜	185⅝		2.60	482.62
501	7, 8	26952	4/4, 35	60	1,716⅜	1,335	Camb. edgs. ..	28	373.80
320	9, 10	26693	"	67	2,107½	1,639	....	19	311.41
312	11, 12	26820	"	70	1,738½	1,352½	....	19	256.93
373	13, 14	26791	¾, 45	48	1,294	1,006½	....	28	281.82
				302	7,357½	5,722⅝			2,288.69
Bleaching & finishing									132.
Making up & ornaments									30.
									162.
									2,450.69
Less 3,769, 7 au., 5 % badly worked								2.60	18.20 91
								Francs..	2,449.80
(Add to make market value 169.38)									169.38

7948.

Stitches.	Box.	No.	Repeats price.	Pcs.	Yds.	Aune.			
380	1	25539	4/4, 35	9	323⅛	251⅝	Camb. edgings	22	55.36
449	2	23525	"	50	1,289⅝	1,003		26	260.78
546	3	26736	"	40	1,037⅝	807		34	274.38
580	4, 5	26742	"	48	1,293	1,005⅝		33	331.86
602	6	26894	"	34	857½	667		34	226.78
554	7, 8	26492	"	28	502	390½		36	140.58
556	9, 10	27044	"	40	679⅛	528⅛		34	179.56
673	11, 13	26666	"	50	896	696⅞		42	292.69
662	14, 15	26462	"	49	870¼	676⅞		41	277.52
772	16, 17	26844	"	30	538	418½		44	184.14
807	18, 19	26947	"	60	1,213	943½		46	434.01
345	20	20421	"	40	898	698½		21	146.69
640	21	26966	"	32	718	558½		39	217.82
526	22	27023	"	32	1,006	782½		30	234.75
896	23	27741	6/4, 28	30	358	278½		43	119.75
956	24	27743	"	30	358	278½		46	128.11
830	25	21158	"	50	538	418½		41	171.58
632	26, 27	21158	6/4, 28	50	538	418½		41	171.58
1,122	28	27744	"	40	628	488⅜		31	151.43
		27745	"	28	250½	194½		56	108.92
37									
				720	14,254⅛	11,086⅝			3,936.71
Bleaching & finishing									232.10
Making up & ornaments									52.75
									284.85
								Francs..	4,221.55
(Add to make marked value									291.81)

7949.

Stitches.	Box.	No.	Repeats price.	Pcs.	Yds.	Aune.			
							Swiss sets.		
11,859	1, 4	296 S	6/4, 28	51	230⅝	179⅜	Skirt'gs	5.60	1,004.50
3,704	5, 6	296 *d*	"	28	249⅜	194	Edgs.	1.90	368.60
4,779	7	296 E	"	19	169	131¼	"	2.40	315.60
1,506	8, 9	296 A	"	33	447½	348	Insert.	69	240.12
1,695	10, 13	296 B	"	60	691	537½	Edgs.	80	430.
2,281	14, 16	296 C	"	39	348⅞	271⅜	"	1.15	312.08
				230	2,136⅜	1,661¾			2,670.90
Bleaching & finishing								175.95	
Making up & ornaments								45.90	
									221.85
								Francs..	2,892.75
(Add to make market value									199.27)

7950.

332	1	26697	4/4, 35	57	772⅛	600½	Camb. edgs. .	23	138.11
332	2	"	"	27	648	504	..	21	105.84
1,173	3	26953	"	40	536⅞	417⅜	..	66	275.63
219	4	26611	"	48	1,469½	1,143	..	14	160.02
605	5, 6	26746	"	40	1,078	838½	..	34	285.09
632	7, 8	27041	"	40	722½	562	..	37	207.94
966	9, 11	27127	"	40	875½	681	..	53	360.93
526	12	27023	"	40	884⅜	688	..	30	213.28
714	13	27451	"	52	927⅜	721½	..	40	288.60
610	14	27021	"	34	753½	586	..	34	199.24
402	15, 16	26759	"	50	866	673⅝	..	25	168.41
							Na-nzook sets.		
31,556	.....	265 O	5/4, 32	7	31¼	24⅜	Allover.....	15.15	374.96
4,954	.....	265 *d*	"	15	133⅛	103½	Edgs.	2.50	258.75
1,716	.....	265 A	"	20	268¼	208½	Ins.	85	177.22
3,654	18	265 C	"	21	284	220¾	Edgs.	1.90	419.66
1,312	.....	265 B	4/4, 36	25	443⅝	345	"	75	258.75
				556	10,695	8,318⅜			3,892.43
Bleaching & finishing								151.95	
Making up & ornaments								35.50	
									187.45
									4,079.88
Less 27451, 2 x 1 yds., 1½ au., allowed damages, 2.40									60
								Francs..	4,079.30
(Add to make market value									283.06)

38 *Recapitulation.*

				Boxes.	Cases.
F [MB] No.	7947	Frcs..	2,449.80	28	70
"	7948	" ..	4,221.55	40	20
"	7949	" ..	2,892.75	33	20
"	7950	" ..	4,079.30	29	20
		Francs..	13,643.40		

The invoice was endorsed as follows:

F [MB]. 7948. Case as noted. Balance classified. Add in add'n to amount added by importer to make market value, ——. Nov. 18, '87. G. C. T. S. W. Kent. Approved: Lewis McMullen, appraiser.

Also the memorandum prefixed and attached to the invoice by plaintiffs as follows:

"NOVEMBER 9, 1887.

From Muser Brothers, 465 & 467 Broome street, New York.

Cases F [MB] # 7947–'50.
We add to make market value 3 % on fs. 13,480.73, fs. 404.42."

Also the following memorandum attached by the collector:

"Appraiser adds to invoice value—

Invoice No. 6707:

For goods not extended, ——.
For goods in excess, ——
To make market value, ——.
Advance 7 per cent.
Custom-house, N. Y., Nov. 21, 1887.

D. N.,
Amendment Clerk."

Chas. Bleidon, custom-house broker, 25 William street.

Chas. Bleidon, custom-house broker, 25 William street.

Invoice dated St. Gall., October 22, 1887.

Import Entry of Merchandise Imported by Muser Bros. in the Steamer La Normandie, Whereof —— —— is Master, Arrived November 8, 1887, from Havre.

NEW YORK, *November* 9, 1887.

Marks.	Nos.	Packages and contents.	Quantities.	40.
F [MB]	7943	One case cotton embroideries		2,404.50
	7944	One " " "		3,378.40
	7945	One " " "		2,396.40
	7946	One " " "		2,133.05
				10,342.35
		Less commission, making up, &c.		364.76
				Frs. 9,977.59
		C. 19.3c		$1,925.68
		St. Gall., October 22, 1887.		
F [MB]	7947	One case cotton embroideries		2,449.80
	7948	One " " "		4,221.55
	7949	One " " "		2,892.75
	7950	One " " "		4,079.30
				13,643.40
		Add to make market value 3%		404.42
		On fs. 13,480.73, as per statement		14,047.82
		Less making up & ornaments		164.15
				Frs. 13,883.67
		C. 19.3c		$ 2,679.55
		Amount of first invoice		" 1,925.68
				$4,605.23
E M C	2 inv.			182
	4605	40—$1,842.00.		4,787

169.38
291.81
199.27
283.06
943.52

Amend. Nov. 21, '87.
4,787, 40%—1,914.80
W. E. C. U.
Amend..... 1,914.80
Orig..... 1,842
W. N. J.
Inc..... 72.80
W. E. C. U.

MUSER BROS.,
463–467 *Broome Street.*

DANIEL MAGONE, COLLECTOR, ETC.

29

40 ST. GALL., *the 23rd July*, 1887.

Messrs. Muser Brothers, New York, to Muser Brothers, St. Gall., Drs.

Forwarded via Havre the following goods, sent in 1 case, marked F [MB] No. 7872.

All charges not specially enumerated in this invoice, except such as pertain to packing, are included in the price of goods.

7872.

Stitches.	Box.	No.	Repeats price.	Pcs.	Yds.	Aune.			
264	1	4047	4/4, 35	30	1,225⅝	953¼	Camb. ins....	17	162.03
316	2	4043	"	50	1,929⅜	1,500⅞	"	19	285.17
937	3	120 *b*	"	20	349¼	271½	Camb. edg....	53	143.89
1,758	4	120 *c*	"	16	212½	165¼	" "	97	160.29
5,863	....	120 F	"	8	68⅝	53⅜	" "	3.45	184.14
12,925	....	120 *o*	"	9	42¼	32¾	" allover.	7.	229.25
8,182	5	115 *o*	"	7	33¼	26	" " .	4.60	119.60
3,905	....	115 *q*	"	8	69¼	54	" edgs...	2.45	132.30
2,885	6	115 F	"	8	70¼	54½	" " ...	1.85	100.82
845	7	115 C	"	20	249⅜	194	" " ...	52	100.88
505	8	115 *b*	"	28	500⅜	389⅜	" " ...	31	120.71
760	....	115 A	6/4, 28	20	358¼	278½	" insert..	35	97.47
				224	5,109	3,973¼ au.		Frcs..	1,836.55
Bleaching & finishing.....Frcs..								92.40	
Making up & ornaments..... " ..								21.	
									113.40
								Francs..	1,949.95
(Add to make market value.....									134.90)

Boxes & case, frcs. 18.90.

The invoice was endorsed as follows:

F [MB]. 7872. Case as noted. Add to make market value as noted. Importer's add'n noted. Aug. 15, '87. G. C. T. S. W. Kent. Approved: Lewis McMullen, appraiser.

41 Also the memorandum prefixed and attached to the invoice by plaintiffs as follows:

"Address all letters to box 921.

OFFICE OF MUSER BROTHERS,
COR. BROOME AND GREENE STREETS,
NEW YORK, *August* 8, 1887.

Add 3% to make market value on all numbers—
fs. 1,928.95,
3%, fs. 57.85."

Also the following memorandum attached by the collector:

"Appraiser adds to invoice value—

Invoice No. 7524:

For goods not extended, ——.
For goods in excess, ——.
To make market value, ——.
Advance 6 per cent.
Custom-house, N. Y., Aug. 17, 1887.

T. W. S.,
Amendment Clerk."

42 *Merchant's Appraisement Attached to Invoice.*

D. P., Aug. 29, '87.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE, *Sept.* 8, 1887.

SIR: We have examined a lot of cotton embroidery imported by Muser Bros., in the S. S. "La Normandie" (Havre), from St. Gall., July 23, '87, and do hereby certify that in our opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was and we do thereby appraise the same as follows:

Marks.	Numbers.	Description of merchandise.	Total francs.
F [MB]	7872	One case cott. embroidery..... Camb. edges, &c., as per inv., francs	1,836.55
		Add bleaching, &c.....	92.40
		Fcs.....	1,928.95
		Imp. adds 3 %	57.85
		Fcs.....	1,986.80

(Advance less than 10 %.)

D. N.

The entry sustained by—

JACOB HIRSH,
Merchant Appraiser.

D. P., Aug't 9, 1887.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE, *Sept.* 8, 1887.

SIR: We have examined a lot of cotton embroidery imported by Muser Bros., in the S. S. "La Normandie," from St. Gall., 23 July, '87, and do hereby certify that in our opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was and we do thereby appraise the same as follows:

Marks.	Numbers.	Description of merchandise.	Total francs.
F [MB]	7872	One case cotton embroidery..... Camb. edges, &c., as per inv., francs	1,836.55
		Add bleaching, &c.....	92.40
			1,928.95
		Imp. add.....	57.85
			1,986.80
43			1,986.80
		Appraiser's add.....	134.90
		Francs.....	2,121.70

The advance sustained by—

——.

The collector concurs with the general appraiser.
Dated Nov. 19, '87.

D. MAGONE, *Collector.*

Due merchant appr., $5.
(W. E. C. U.)

PHILIP W. DOUNES,
General Appraiser.

Chas. Bleidorn, custom-house broker, 25 William street. Invoice dated Calais, July 27, 1887.

Import Entry of Merchandise Imported by Muser Bros. in the La Normandie, Whereof —— —— is Master, Arrived August 7, 1887, from Havre.

NEW YORK, *August* 8, 1887.

Marks.	Nos.	Packages and contents.	Quantities.	50.	40.			
D [MB]....	4776	One case silk laces.....	.....	3,849.20	2 invoices:			
	4777	One " " "	.....	3,849.40	2,082, 50	.....	1,041.00	
	4778	One " " "	.....	3,193.40	383, 40	.....	153.20	
				10,937.00			1,194.20	
		Add cost of shipment, transportation.....	.....	134.95				
				11,071.95		H. H. C.		M. S.
		Less cost of shipment, transportation, putting up, boxes, tickets, boards, & fol-ing..	.....	286.95				
		St. Gall., July 23, 1887.		Frs. 10,785.00				
		C. $19\frac{3}{10}$c.....	.....	$2,081 50		P.	Aug. 10.	R.
F [MB].....	7872	One case cotton embroideries.....	.....		1,949.95			
		Add 3% to make market value on fs. 1,928.95, as per statement.....	.....		57.85			
					2,007.80			
		Less making up and ornaments...	.....		21.00			
					Frs. 1,986.80			
		C. $19\frac{3}{10}$c.....	.....		$383 45			
		Amounts of first invoice.....	.....	$2,081 50				
Amended	1,204 60	Amended Nov. 19, '87. H. B. T.		$2,081 50	383 45	Reappraisement,		
Original..	1,194 20	2,082, 50..... 1,041 00				2,121.70		
		409, 40..... 163 60				$409		
Increase..	10 40							
		N. Y. 1,204 60						
P. Nov. 28.	W.E.C.U.	W. E. C. U.				MUSER BROS., 463–467 *Broome Street.*		

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DANIEL MAGONE, COLLECTOR, ETC. 33

45 St. Gall., *the 20th August*, '87.

Messrs. Muser Brothers, New York, to Muser Brothers, St. Gall., Drs.

Forwarded via Havre the following goods, sent in 2 cases, marked F [MB] No. 7880–'81.

All charges not specially enumerated in this invoice, except such as pertain to packing, are included in the price of goods.

Case No. 7880 contains goods not in controversy to the amount of 5,438.40.

7881.

Stitches.	Box.	No.	Repeats price.	Pcs.	Yds.	Aune.			
484	1	26721	¼, 35	40	896⅝	697⅜	Camb. edg's ...	29	202.24
1,173	2	26897	"	20	210½	163⅞	" ...	68	111.35
1,309	.....	26806	"	20	219⅜	170½	" ...	75	127.97
1,455	3	26330½	"	24	212⅝	165¼	" ...	84	138.71
3,770	4	5 G	"	6	52	40⅜	" ...	2.40	96.90
4,467	5	68 O	⅜, 28	34	151⅝	118¾	Swiss allover ...	2.20	259.88
949	6, 7	68 B	"	38	677⅞	527¼	" edg's	48	253.02
879	8	90 A	"	16	142	110½	" ins.....	40	44.20
842	.....	90 B	"	15	135	105	" edg's	42	44.10
5,039	9	90 E	"	7	62⅜	48⅝	" "	2.50	121.87
8,979	.....	90 SH	"	9	39⅜	30⅝	" sk't'gs ...	4.45	136.84
									1,537.08
Bleaching & finishing								99.70	
Making up & ornaments								24.90	
									124.60
									1,661.68
858	24	3616	¼, 35	5	70⅞	55	Swiss ins.....	51	28.05
804	.....	23986	"	5	71½	55⅝	" edg's	49	27.26
1,128	.....	31 A	"	5	88½	68⅝	" ins.....	65	43.23
804	.....	31 B	"	6	177⅜	138⅝	" edg's	45	62.27
848	.....	23180	"	6	107	83½	" "	49	40.79
726	.....	3529	⅜, 30	6	106⅝	82⅝	" ins.....	36	29.79
									231.39
Bleaching & finishing								8.05	
Making up & ornaments								2.10	
									10.15
									241.54
(Add to make market value (131.03)									131.03)

Balance of case 7881 contains goods not in controversy to the amount of 2,096.28.

46 *Recapitulation.*

F [MB] No. 7880 ..... Frcs... 5,438.40
7881 ..... " .. 3,999.50

Francs.. 9,437.90

MUSER BROS.
E. MEYER.

The invoice was endorsed as follows:
F [MB]. 7881. Case as noted. Add to make market value as

noted. Importer's add'n noted. Sept. 15, '87. G. C. T. S. W. Kent. Approved: Lewis McMullen, appraiser.

Also the memorandum prefixed and attached to the invoice by plaintiffs as follows:

"SEPTEMBER 7, 1887.

From Muser Brothers, 465 & 467 Broome street, New York.

Add to make market value—

Case F [MB] 7881, 35 % on Nos. 26721, 90 SII, 3616, 3529 (fs. 1,876.22), fs. 56.29."

Also the following memorandum attached by the collector:

"Appraiser adds to invoice value—

Invoice No. 2878:

For goods not extended, ——.

For goods in excess, ——.

To make market value, ——.

Advance 3 per cent.

Custom-house, N. Y., Sep. 16, 1887.

T. W. S.,
Amendment Clerk."

47 *Merchant's Appraisement Attached to Invoice.*

D. P., Sept. 7, 1887.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE, *Oct.* 18, 1887.

SIR: We have examined a lot of cotton emb'd'y imported by Muser Bros., in the S. S. La Normandie, from St. Gall., Aug't 20, '87, and do hereby certify that in our opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was and we do thereby appraise the same as follows:

Marks.	Numbers.	Description of merchandise.	Total francs.
F [MB]	7880–'81	Two cases cot. emb'd'y.. } Total ...	9,170.85
		Cot. emb'd'y as per inv.. }	
		Add bleaching & finishing.....	215.55
			9,386.40
		Less making up, 47,880	35.10
			9,351.30
		Add 6 % on 1,876.22.....	112.57
		Francs	9,463.87

EDW'D E. EAMES,
Merchant Appraiser.

D. P., Sept. 7, 1887.

PORT OF NEW YORK,
GENERAL APPRAISER'S OFFICE, *Oct.* 18, 1887.

SIR: We have examined a lot of cotton embroidery imported by Muser Bros., in the S. S. "La Normandie," from St. Gall., Aug't 20, '87, and do hereby certify that in our opinion the actual market value or wholesale price of the said goods, at the period of the exportation thereof to the United States, in the principal markets of the country from which the same were imported into the United States, was and we do thereby appraise the same as follows:

Marks.	Numbers.	Description of merchandise.	Total francs.
F [MB]	7880–'81	Two cases cot. emb'd'y.. } Total ...	9,170.85
		Cot. emb'd'y as per inv.. }	
		Add bleaching & fin'g.....	215.55
			9,386.40
		Less making up, 7,880.....	35.10
			9,351.30
		Add 10 %, 1,876.22	187.32
		Francs	9,538.62

48 The collector concurs with the general appraiser.
Dated Oct. 19, '87.

D. MAGONE, *Collector.*

Due merchant appr., $5.00.

GEO. V. BROWER,
General Appraiser.

(W. E. C. U.)

49 Chas. Bleidorn, custom-house broker, 25 William street. Invoice dated St. Gall., August 20, 1887.

Import Entry of Merchandise Imported by Muser Bros. in the Str. La Normandie, Whereof —— —— is Master, Arrived September 5, 1887, from Havre.

NEW YORK, *September* 7, 1887.

Marks.	Nos.	Packages and contents.	Quantities.	40.	50.	30.	
F [MB].....	7880	One case cotton & silk embroideries.....	.....	3,806.89	1,631.51		
	7881	One case cotton embroideries.....	.....	3,999.50			2 invoices: 1,504, 40.. 601.60; 996, 50.. 498.00; 114, 30.. 34.20 = 1,133.80
		Add, to make market value, 3 % on fs. 1,876.22 (Nos. 811 Co. R. 26721-90, 3616-35-29).....	.....	7,806.39 56.29	1,631.51		
				7,862.68	1,631.51		
		Less making up & ornaments.....	.....	68.60	18.00		
			Add as per re-app'l:	Frs. 7,794.08	1,613.51		
		C. 9.3c.....	1,529, 40.. 611.60 996, 50.. 498.00	$1,504.26	311.41		
		Paris, August 25, 1887.	114, 30.. 34.20	25	1		
			1,143.80	1,529.26	312		
P [MB].....	1573	One case flax laces.....	W. E. C. U.	.....	.....	628.15	
	1574	One " silk "	.....	.....	3,658.90		
		E. A., Nov. 19, '87. M. M. C.					
		Less commission, boxes, folding, &c.....	.....	.....	3,658.90 112.00	628.15 35.90	
					3,546.90	592,25	
Am'd .. 1,143.80 Orig'l .. 1,133.80 Inc..... 10.00 W. E. C. U.		C. 19.3c.....	.....	.....	684.55	114.31	
P. Nov. 28, '87.		Amounts of first invoice.....	.....	1,504.26	311.41		
		All charges appearing on the above invoices without being deducted on the entry are not included in the price of the goods.		$1,504.26	995.96	114.31	

MUSER BROS.,
P'r CHAS. BLEIDORN, *Att'y*,
Cor. Broome & Greene Sts.

50 All the writing enclosed in brackets on the foregoing entries and invoices was put on them by the customs officials. Also the following protest:

NEW YORK, *December 2d*, 1887.

Hon. Daniel Magone, collector of customs, New York.

SIR: We hereby protest against the standard of value adopted by the appraising officers and of their appraised value as returned by them and approved by you, and your decision, liquidation, and assessment of duties on said value as made by you on our importations below mentioned, consisting of certain cotton embroideries, upon each of the following grounds:

First. Against your decision establishing or adopting as the standard dutiable value of said merchandise a value including, besides the actual market value or wholesale price, commissions and charges non-dutiable under section 7, act March 3, 1883, and against all additions we are obliged to make on entry to cover such items of cost and to meet such standard, claiming that the said items of cost are not dutiable, and that you have no legal right to assess duty thereon, and that it is part of your official duty to cause the proper dutiable value of said goods to be returned by the appraiser, which value should be exclusive of the items of cost mentioned; whereas, on the contrary, you have liquidated and assessed the duties upon the appraised value, which includes said charges and costs, contrary to the expressed provisions of section 7, act March 3, 1883.

Second. We claim the dutiable standard of value of these embroideries as adopted by you and the appraising officers to be erroneous and illegal because instead of appraising these goods at their actual market value or wholesale price in the gray, their standard marketable condition, and adding to such value the cost for laundrying and finishing them to their present condition, and no more, as provided by section 2906, R. S., and section 7, act March 3, 1883, there has been illegally included in the appraised value, besides such actual market value and cost of finishing, a further amount to cover the incidental charges incurred in the purchase and preparation of said goods for shipment, such charges or incidental expenses being for designs furnished the manufacturer, salary of the buyer, and clerk hire, rent of buyer's office, and rooms for putting up and packing for shipment, interest on money credits for the purchase of the goods and for a profit or commission in excess of such aggregate cost or one or more of such charges; which
51 charges or items of cost we claim to be non-dutiable by force of section 7, act March 3, 1883.

Third. Dutiable at no more than the cost or value of the materials composing such merchandise, together with the expense of manufacturing, preparing, and putting up such merchandise for shipment as provided in section 9, act March 3, 1883.

Fourth. That all additions for a so-called commissioner's or for a so-called agent's or manufacturer's profit or for charges of whatsoever character incident to the purchase or procurement of said

goods is made under duress to obtain our goods, claiming the same to be in excess of the legal dutiable value thereof, that they are non-dutiable, and the exaction of duty thereon illegal.

Fifth. We protest against the reappraising officers including in their dutiable value, under the pretext of returning the value of the goods *per se*, the non-dutiable items of cost, mentioned as illegal and a falsification of the facts, their appraised value assuming to exclude said charges, while as a matter of fact it does include them.

Sixth. That the standard marketable condition of embroideries is in the gray; that the wholesale current market prices for regular goods bought in the regular manner is usually quoted in the gray, according to the number of stitches contained in a given pattern; such price plus the market value of the muslin upon which the stitching is done constitutes their marketable value in their wholesale marketable condition; to this value is to be added the expenses for laundrying and finishing, to make dutiable value under existing laws, and no more.

Seventh. We further protest against the practical denial of our right to a legal reappraisement, provided by section 2930, R. S., in that the general appraiser declines to go into the inquiry of the actual market value and wholesale price of said goods which obtain among first dealers, but insists that we shall be treated as manufacturers, and that to the said cost, price, or value there shall be added a further amount of 10% to cover a profit or commission or charges of some sort, thereby rendering the redress provided by said section nugatory and of no purpose. We deny that we are manufacturers, and claim that we are merchants simply, purchasing our goods at the best advantage possible, claiming the right to do so as merchants; that we have no advantages not common to any and all discreet and experienced merchants who will exercise due diligence in procuring their goods from first hands themselves without the intervention of commissioners or middlemen; the fact of having an office and rooms at St. Gall and having certain patterns made to order by us from designs furnished by us does not consti-
52 tute us manufacturers in the meaning of the term.

Eighth. That if held to be manufactured the addition of 10% above the actual cost of producing said goods is nevertheless illegal under the provisions of section 9, act M'ch 3, 1883, for the ascertainment of dutiable values in such cases.

Ninth. That the provision of section 2900, prohibiting the assessment of duty on less than the invoice value, does not justify the raising of our invoices to meet the exceptional and speculative prices which may be charged on invoices from jobbers, commission merchants, or second dealers in excess of the wholesale price at which the goods may be and are purchased on the spot from first hands by discreet and experienced merchants.

Tenth. That it is the wholesale price which obtains between first dealers which is the standard of dutiable value and not the speculative and fluctuating prices which may be paid to jobbers or speculative dealers.

Eleventh. We therefore give notice that we pay all duties in

excess of the duties as claimed above as the legal duty under compulsion and to obtain possession of our goods, and we also give notice that we do not intend by this protest to relinquish or waive any right we may have to a refund of the difference between the duty exacted of us and any less duty which may hereafter be adjudged the legal duty upon said goods, intending this protest to be made against the present duty charged upon said goods, claiming that said duty is not the legal duty to which said goods are chargeable, holding you and the Government responsible for all excess of duty exacted by you upon said goods above the legal duty, and protesting against all illegal exactions of duty thereon, and hereby give notice that we intend this protest to apply to all future similar importations by us, and also intend the duplicate protest herewith submitted for transmission by you to the Secretary of the Treasury, under the rules of your office, to be an appeal to him from your decision, and to likewise apply to all future similar importations by us.

		1887.	Entry No.	Liq'd.
S. S. La Normandie, from	Havre.....	Aug. 9.	116102.	Cons. Nov. 25, 1887.
La Normandie, do.	do.....	Sept. 7.	131315.	Cons. Nov. 25, 1887.
La Champagne, do.	do.....	Sept. 20.	138532.	Cons. Nov. 29, 1887.
La Bretagne, do.	do.....	Oct. 5.	147595.	Cons. Nov. 28, 1887.
La Bourgogne, do.	do.....	Oct. 11.	150674.	Cons. Nov. 29, 1887.
La Normandie, do.	do.....	Nov. 11.	168439.	Cons. Nov. 25, 1887.

Very respectfully,

MUSER BROS.,
By CHAS. CURIE, *Att'y.*

53 It was admitted by defendant's counsel that said protest applied to all of said entries and was made in time, and that on all said entries an appeal was duly taken from the decision of the collector, and that this suit was thereafter begun within the statutory time, and that on all of said entries the duties were paid before plaintiffs obtained possession of the goods.

Plaintiffs' counsel then called as a witness—

LUCIEN A. DUPERRET, who, having been first duly sworn, testified that he was custom-house clerk of plaintiffs, and that the entries in evidence were in his handwriting, and that the words "Add three per cent. to make market value" on the entry by the Normandie, dated August 9, and by the Normandie, dated September 7, and by the La Bretagne, dated October 5, and by the La Bourgogne, dated October 11, were put on to avoid a penalty of ten per cent., because it was supposed that the appraiser would advance the invoice ten per cent., and that if it was advanced ten per cent. that then a penalty of ten per cent. would be added.

Being cross-examined, the witness said the addition of the three per cent. was made by direction of Mr. Muser, plaintiff, who told him the reason why it was done.

Plaintiffs' counsel then called as a witness—

CHARLES BLEIDORN, who, having been duly sworn, testified that in 1887 he was a custom-house broker for plaintiffs and made the

entries at the custom-house and paid the duties; that the addition of three per cent. upon the entries above referred to was
54 placed thereon to avoid a penalty; the deputy collectors would not allow an addition to be made on the entry, specifying it to be for commission or manufacturer's profit, but only "to make market value."

Being cross-examined, the witness said: I made only one application for leave to make an addition for manufacturer's profit.

Plaintiffs' counsel then called as a witness—

JOHN QUACKENBUSH, who, having been duly sworn, testified that he was chief entry clerk and acting deputy collector in the New York custom-house, and was so employed in 1887 and for many years prior.

That in 1887 the practice of the custom-house was to compel importers who made additions to their invoice value to state it to be an addition for value. No permission was given nor was it allowed them to state or to add "for commission" or "for charges" or to make any other statement except simply to add "for value" since the passage of the act of 1883, as section seven prohibited it as we considered it.

Plaintiffs' counsel then called as a witness—

GEORGE C. T. SEAMAN, who, having been first duly sworn, testified as follows: I am examiner in the appraiser's stores, and was in 1887. The invoices referred to in the bill of particulars in this case came to me in the regular course of business for examination, and "G. T. S." on the invoices and entries was put there by me. My duty was to examine the goods.

55 Q. What did you do?

To this question defendant's counsel objected as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Did you have to do with the reappraisement of the goods?

To this question defendant's counsel objected as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Look at the papers Exhibit 4 and the invoice. That is a case where there was no reappraisement.

A. I find my initials on that invoice also.

Q. What did you do in respect to that invoice?

A. I advanced the entry seven per cent. The advance on the entry was three per cent., and I advanced it seven more to make it ten. The advance was made by direction of the assistant appraiser.

Mr. Tillotson was in the appraiser's office at the time of these entries, and is now. He was stitch-counter of embroideries to see if they corresponded with the invoices, and reported to me. He also examined the cloth. No question was made that the cost of the cloth and the number of stitches stated in the invoices was correctly stated. I heard no complaint that the cost of the cloth, and the cost of the stitching was not correctly stated in the invoice.

Plaintiffs' counsel then called RICHARD MUSER, who, having been duly sworn, testified as follows: I am one of the plaintiffs,
56 and have been importer of laces and cotton embroideries for over twenty years. These goods were made in St. Gall., in Switzerland. I attended on their reappraisement here. We had witnesses to explain to the general appraiser and merchant appraiser the way our goods were procured.

The correctness of the invoices themselves was not questioned. I told the appraisers that we had an office in St. Gall. to which we sent our orders, and they employed a designer who draws the patterns, and the patterns are sent over here for selection, or my buyer, when he goes to Europe, selects suitable patterns from those prepared for him. Then a contract is made with manufacturers and owners of machines to embroider those patterns for so much per one hundred stitches, including the thread or yarn used. When the goods are embroidered they are delivered to our office in the gray, and are then delivered by our office to a finisher whose business it is to bleach them, and after they are bleached they are returned to the office; they are then cut up into suitable lengths, ticketed, prepared for shipment, packed in cartons, the cartons packed in wooden boxes and shipped to this country and invoiced. This is what I told them there on the reappraisement. The expenses connected with all these different manipulations are all contained in the invoices, and they form the basis of the cost at which the goods are figured in our invoices, and sworn to before the consul at St. Gall. as our cost. I told them all this. Then I produced several witnesses to substantiate my statement, and after the
57 general appraiser and the merchant appraiser discussed the matter and the general appraiser said that we were manufacturers and that it was necessary to add the profit that a manufacturer would make in order to make market value, and he thought that that ought to be ten per cent.

Defendant's counsel:

Q. Did you hear him say this?

A. I repeatedly heard him say that. On one reappraisement (I believe it was the one when Mr. Hirsh was the merchant appraiser) Mr. Hirsh differed with him and thought that no addition should be made, and that our invoice as presented to the collector was correct and contained the correct market value of the goods. At the subsequent appraisement Mr. Eames the partner of H. B. Claflin & Co., was merchant appraiser; he said and in fact insisted on the addition of six per cent. to the invoice. In another case Mr. Gibb was the merchant appraiser, and he added ten per cent., agreeing with the merchant appraiser. In the two cases first mentioned, where there was a difference of opinion between the merchant appraiser and the general appraiser, the collector decided with the general appraiser that ten per cent. was the right amount to be added to the original cost.

The man who is employed there (I believe his name is Tillotson) to count the stitches was called down and asked whether he had ex-

amined the goods and counted the stitches and whether he had found them correct. He said he had examined them and found them correct. The cost of the cloth he also adds in arriving
58 at the price of the goods. He found the additions for bleaching and finishing correct. There was no question as to the valuation as given in our invoice. The only question was whether an addition should be made for manufacturer's profit. St. Gall. is the principal market for embroideries in Switzerland; I have been there; we have had a house there for a number of years.

These goods were not standard goods. What I understand by standard goods are goods that are essentially the same—of a given weight and texture. The cloth was a standard article. Our goods of the patterns imported in 1887 were not reported in any price current or in any papers; the cloth is, but not the embroidered goods. The rate of stitching is published almost every day in the papers, but not the finished article.

As far as I know, none of our goods were bought or sold in St. Gall. or in Switzerland.

Cross-examination by defendant's counsel:

I was in St. Gall. last in 1875. I believe we have moved, but when I was there last we had probably the same space as this court-room would occupy, divided up into three or four different rooms, all on one floor at that time. I cannot tell whether the place we now have is larger or smaller than it was in 1887, for I have not seen it. In this office we have a designer and persons who attend to the unpacking of the cloth, which is bought in St. Gall. from the Manchester agent and delivered there to them, and persons who attend to sending the goods to the stitchers, and when they are sent back from the stitchers they examine
59 them to see if they are properly stitched; after they have been properly examined they are sent out again to be bleached, and when they come back there again they are again examined to see whether they have been properly bleached; then they are cut up into suitable lengths and strips for the American market, and are then put up and shipped and ticketed.

I have been in business here since 1862. I believe I began importing embroideries in 1867.

I know that the mode of appraising cotton embroideries in the appraiser's department in this city has been the same as it is now for a good many years, with a little break or interval some years ago. I think that from 1878 to the spring of 1885 these goods were appraised as they are now, and that they have been so appraised from the fall of 1885 to the present time.

I am aware that in the early fall of 1885 there was considerable discussion as to the proper mode of appraising cotton embroideries, but I have taken very little part in it, except when my goods were advanced I called for a reappraisement. I was asked several times to join others in different actions, but have always refused to do so, preferring to fight my own battles.

There was in September, 1878, a meeting of all the gentlemen in this city interested in the cotton-embroidery trade at the Manhattan hotel. I was there a part of the time. The principal object of the meeting was to discuss the proper mode of appraising em-
60 broideries, and it was agreed by the merchants there represented, and their agreement was embodied in certain resolutions, that the proper mode of appraising cotton embroideries was the mode now in use; it is the only way of arriving at the value of cotton embroideries; everything else than on stitch basis is mere guess-work. There was a committee appointed to confer with the Government officers as to putting in force the ideas that had been agreed upon at the meeting. After I went away they put my name on, and they came to me, and I said then that I did not exactly like to be on that committee, but I was prevailed upon to allow my name to remain.

Q. That committee informed the appraisers and Government officers that the proper mode of appraising cotton embroideries was to take the cost of the cloth in the gray and add to that the cost of its stitching as determined by the market rates for stitching in St. Gall at the time of stitching, and adding thereto the cost of bleaching and finishing, and adding thereto an item of ten per cent. on the total cost thus obtained for the expenses and profit of manufacturing in order to make up the market value of the goods. Is not that so?

A. If you will allow me to go into that meeting, I wish to state that there had been considerable disturbance between the makers or importers of St. Gall. embroideries, and the Government engaged some special agent who claimed that the importations coming to this market were undervalued all the way from ten to forty per cent., and I believe that some goods were advanced as high
61 as forty per cent. Some of my importations were held and advanced, and I called for a reappraisement, and my goods were passed as correct at the entry; but other importers had considerable trouble and urged on the general appraisers of the United States to have a conference. There were three of them—one from Boston, the general appraiser from Baltimore, and the general appraiser from this port, and Mr. Coombs, the chairman—and they had a conference between the merchants and themselves, and on the part of the merchants Mr. Steiger took the greatest interest in the matter. I believe that he was probably afflicted in the same manner as those were and could not get his goods. The result of those meetings was the meeting at the Manhattan hotel, at which Mr. Coombs, the general appraiser, made a speech, declaring that it was utterly impossible to determine the market value of an importation, except by counting the stitches, to which I fully agree, because you might as well guess the number of pennies a man may have in his hand or guess how many apples there are in a barrel as to guess, by looking at a piece of embroidery, how much it is worth, unless you know the number of stitches in it.

Q. Then in your judgment an appraisement of cotton embroidery on view is impossible?

A. It is not only impossible, but impracticable. No two persons would agree on the same piece of goods; they would differ from five to fifty per cent.

Q. Is it not the fact that you, as a member of this committee, informed the Government officers that the proper mode of
62 determining the value was to take the cost of these various elements and add ten per cent. to the total?

A. I deny it. I did not. I never had any conference with the Government officers. This thing was all prepared and laid before me, and it was accepted by the merchants in order to get some basis on which to deal with the Government. I told Mr. Coombs, when he approached me on this matter, "I will sign it, but I will sign it under protest, because I know it is unjust," and I wrote on the same day that I signed it (when the document was brought to my office) a letter to Mr. Coombs, the chairman of the committee of general appraisers, telling him that I had signed this under duress, and that I was satisfied that it was unjust, and that I would continue to pay my duties under protest.

I signed a paper which stated that this was the correct mode of appraising these goods, and I affirm that it is the only correct mode of appraising the goods except the addition of ten per cent. If I signed the statement that the ten per cent. was a necessary addition, I signed it under protest and gave my reasons on the same day to Mr. Coombs. I signed that paper at that time in order to arrive at a basis on which business could be transacted without any unnecessary delay.

Q. Look at the paper which I now show you and state whether the signature at the end thereof is your signature.

A. It is.

Defendant's counsel offered said paper in evidence. Plain-
63 tiffs' counsel objected to its admission as incompetent to bind the plaintiffs, it being made in 1885 and the entries in suit being made in 1887. The court overruled the objection, and plaintiffs' counsel duly excepted.

64 NEW YORK, *October 1st*, 1885.

To the commissioner of investigation, Messrs. General Appraiser Coombs, Mr. Hinds, and Mr. Lapp, public stores, New York.

SIRS: At a meeting held by all the importers of cotton embroideries, oriental and Egyptian laces, on the 30th day of September, 1885, at the Manhattan hotel, New York, the undersigned were empowered as a committee of five to present and see carried out the recommendations of said meeting, which are embodied in the following resolutions, then and there unanimously carried and resolved upon, and which we herewith have the honor to transmit for your consideration, to wit:

1st. Be it unanimously resolved, "That this meeting should express its conviction to the customs authorities that the counting of

the stitches is the only proper way of arriving at a correct valuation of cotton embroideries, oriental and Egyptian laces."

2nd. Be it unanimously resolved, "That it be recommended that the appraiser, in appraising cotton embroideries, oriental and Egyptian laces, should appraise them by counting the stitches and valuing them at the rate at which they are quoted by the U. S. consul on the day of shipment, adding to this the cost of the cloth, and adding to this ten per cent., to be called manufacturer's profit; then the cost of bleaching, finishing, and putting up."

3rd. Be it unanimously resolved, "That it be recommended to the Secretary of the Treasury that the U. S. consul at St. Gall. be requested to employ an expert in his office in St. Gall. to count the stitches, and that the consul, for this purpose, may demand a certain number of patterns such as he may select from each invoice presented to him for legalization, or, in the absence of an expert, that the consul may demand a certain number of 'cartons' to verify the stitches."

4th. "Be it unanimously resolved, That it be recommended that all invoices for cotton embroideries, oriental and Egyptian laces shipped prior to the 15th of August, 1885, from St. Gall., and if now, under appraisement or reappraisement, shall be appraised at the market value of the rate of stitching on the day of shipment of said goods, plus ten per cent. addition to the cost of the goods in the grey; but that all goods shipped on and after August 15th, 1885, shall be appraised on the system adopted to-day—that is, at the rate of 28 centimes per 100 stitches for $\frac{6}{4}$ patterns, and 33 centimes for $\frac{4}{4}$, these being the minimum rates for stitching adopted by the manufacturers' union at St. Gall, the cost of the cloth, with an addition of ten per cent., plus cost of finishing, bleaching, and putting up; but if the price of the stitching shall be advanced, the invoice must be in accordance with that advance."

5th. "Be it unanimously resolved, That the chairman of this committee be requested to recommend to the Secretary of the Treasury a committee of seven composed of the largest American shippers, who shall give to the U. S. consul at St. Gall. such correct information on the 1st day of each month as will enable him to report the exact market value for stitching to the customs authorities for that month, and that the same shall be published so that every shipper shall be aware of it."

6th. "Be it unanimously resolved, That in order that the examination of embroideries and laces may be thorough and expeditious, that it be recommended that instead of one examiner at the port of New York there should be two or more, and that the number of experts be increased so that it will be possible to count the stitches pertaining to every invoice for these goods."

7th. "Be it unanimously resolved, That the consul may demand that a stitch list giving the number of stitches of every pattern in

an invoice be furnished to him by the shipper, to accompany the custom-house invoice."

The whole respectfully submitted.

JOHN GIBB,
MILLS & GIBB,
SIMON GOLDENBERG,
Of Goldenberg Brothers & Co., Committee.
RICH'D MUSER,
Of Muser Bros.
JACOB HIRSH,
Of Einstein, Hirsh & Co.
CHAS. HAAGER,
Of Albert, Haager & Waldburger.

This committee, after conference with the appraiser and the commission, hereby agree on behalf of the meeting of importers that the 10% referred to in resolutions 2 & 4 as manufacturer's profit shall be added to the cost of the goods in a finished condition, including the cost of the bleaching, finishing, and putting up.

JOHN GIBB,
MILLS & GIBB.
SIMON GOLDENBERG,
Of Goldenberg Brothers & Co.
JOHN HIRSH,
Of Einstein, Hirsh & Co.
CHAS. HAAGER,
Of Albert, Haager & Waldburger.
RICH'D MUSER,
Of Muser Bros.

66 We pay salaries to all the persons employed in our office at St. Gall. We rent the office. Our buyer on the other side has general supervision over this business and has his headquarters there at the office.

Q. He is paid a salary by your house?

Plaintiffs' counsel objected to the question as immaterial, as not being a part of the cost of manufacturing the goods.

The court overruled the objection, and plaintiffs' counsel duly excepted.

A. All the men employed by us, of course, are paid salaries.

I am not aware that the carrying on of this establishment there and the payment of these various salaries requires any amount of capital for investment.

Q. It requires capital invested in that branch of your business just as much as there is capital invested in the branch of your business which is in this city and in the same way?

A. We carry no stock there. The moment the goods are put up and finished they are shipped to this country.

We buy this cloth outright and an interval intervenes before the cloth is stitched, bleached, finished, and ready for shipment. I do

not know at what time it gets to St. Gall. I suppose that our office does not buy the cloth before they have orders for a certain quantity of goods, and then they buy cloth enough to fill that order, and then it is given out to be stitched, which, I suppose, may take from one month to six weeks. During that time our capital
67 is invested in that business and a part of the whole investment in the business is the interest on this capital for that time, the same as the interest on any man's money invested in his business. The goods made in St. Gall., Switzerland, are shipped mostly all to us in this city.

Q. If you sold those goods to some other house you would have to include all these various items of expense in the expense of your goods before you could realize anything?

A. That is just the point I am contesting. I say that my house on the other side is a commission house for us. If I would hire another commissioner in St. Gall. he would do exactly the business my house does for me and he would charge me three per cent. or five per cent. commission, and that commission is not dutiable; whereas, when I am compelled to add ten per cent. to my invoices, they make that ten per cent. double, and I pay four per cent. and fare four per cent. worse than my neighbors do.

Defendant's counsel moved to strike out the answer as irresponsive.

The court granted the motion, and plaintiffs' counsel duly excepted.

If we sold these goods to somebody else we would not put these expenses in as a part of the expense of manufacturing, but would charge them a commission; we would add it in the nature of a commission, and not as manufacturer's profit.

Q. Is it not a fact that at this meeting where these resolutions were adopted which I have just read to the jury (Defendant's Exhibit A) that every house doing any considerable business in
68 this city in cotton embroideries was represented?

Plaintiffs' counsel objected to the question as immaterial. The court overruled the objection, and plaintiffs' counsel duly excepted.

The COURT: I admit this upon the theory that, it being a matter to be determined by the appraiser what the expense of manufacturing is, the statements of those who are in the trade is competent evidence for the appraiser to consider in arriving at his conclusion, but I do not think that this evidence is of any very great weight.

The witness continued:

A. I do not know whether every house was there, but there were a great many there. I cannot name any important house doing business in embroideries that was not represented there. I did not take the trouble to look around because I took very little interest in it.

Q. Is it not the fact that these five houses, whose representatives

signed these resolutions as a committee, which resolutions I have read in your hearing, viz., Mills & Gibbs, Goldenberg Bros. & Co., Einstein, Hirsh & Co., Albert, Haager & Waldburger, and Muser Bros., were five of the largest and most representative houses dealing in these goods?

Plaintiffs' counsel objected to the question as immaterial. The court allowed the question, and plaintiffs' counsel duly excepted.

A. There are houses a good deal larger than those five. There were houses that did a great deal larger business than any of those who signed. For instance, the embroidery business is only a small part of my business. There were houses, like Loeb & Schoenfeld and Guggenheim Sons, who did as much business in one year as all those five houses taken together. Einstein, Hirsh & Co. is one of the largest houses in cotton embroideries. Goldenberg Bros. & Co. is comparatively a small house. Albert, Haager & Waldburger imported more than Goldenberg or than we did.

69

Redirect examination:

I have not personally made an account of the amount of the expenses of our St. Gall. house, because I could not. I have not had one made up for the last few years, but about three years ago our office in St. Gall. made up an account showing what the profit of the office was after the addition of the ten per cent.

Q. State whether those expenses are or are not similar expenses to those that are made by a commission-house which makes a charge for its services.

a
Question objected to by defendant's counsel as immaterial. The
it.
sustained the objection, and plaintiffs' counsel duly excepted.
excep

Q. You have stated that you signed an agreement with some
in St. Gporters of New York, which has been introduced in evi-
Did you understand that it was an agreement with the
Defenc nt or that the Government was bound by it in any way?
as last sta
sel duly ex or defendant objected to the question as immaterial and
greement, being in writing, explains itself. The court
Plaintiffhe objection, and plaintiffs' counsel duly excepted.
who, ha

Q. Did you mean by signing this agreement to concede
In
that it was right that you should pay duty upon ten per
ent.?
t

Objected to; that the paper speaks for itself.

The COURT: I think that it is covered by his statement on direct examination that immediately after signing the agreement he wrote a letter, stating that he did the whole thing under pressure; that he continued to protest, and that he did not consider it right.

PLAINTIFFS' COUNSEL: That is what I desire to bring out.

I continued to protest after this was signed; I wrote a letter to Mr. Coombs on the very same day that I signed the paper, and I only signed it very reluctantly, as I told you before. On October 8th, 1885, I sent the letter produced to Mr. Coombs.

Plaintiffs' counsel read it in evidence as follows:

"NEW YORK, *Oct. 8th*, 1885.

To the committee of investigation, consisting of the Hon. General Appraisers Coombs, Hinds, and Lapp:

An amendment to the report submitted to your honorable board by the committee of five merchants selected to represent the interest of the embroidery importers of this port was signed by me today.

In connection with this amendment I beg to say that I signed it for the sake of 'sweet peace,' but reluctantly as far as my judgment is concerned.

The authority for an exaction of a so-called manufacturer's profit of 10% on the cost of the price for cloth and stitching paid by the importer is a matter of grave doubt with me, but I have no doubt at all as to the illegality of an exaction of 10% manufacturer's profit on the charges incurred for bleaching and finishing.

All embroideries are bought and sold in the 'gray,' and any profit or loss made or incurred by the manufacturer or dealer is on the goods when in their 'gray' or unfinished condition.

The manufacturer has now disposed of the goods, and they are the property of the buyer, and there can consequently be no
71 further claim for a manufacturer's profit, since this person has no further right to or interest in the goods.

The buyer has to undertake the further manipulation of bleaching and finishing the goods, and this process is charged for at established rates, and these rates are the same for goods bought on Ex-stitch basis or otherwise.

If the commissioner attends to the finishing he charges [illegible] lar percentage of commission—generally 3%—which comm[illegible]al. The not subject to duty, and to insist that an importer who pr[illegible] duly ex-goods on the stitch basis and who has to pay the same bleaching and finishing as the commissioner should a[illegible] 10% for purposes of customs payments on this part [illegible] a matter of his goods seems to me to be an unjustifiable exaction[illegible]nufactur-that, in my humble opinion, you ought not to insist upon.[illegible]ent evi-

MUSER BROTHERS[illegible]sion,

72 Q. At the time this paper was signed by you with the other importers what was the situation as to goods in the public stores here; what was the situation?

A. There was an accumulation of goods. I do not believe that some merchants received any goods for two or three months, and the time came when they had to deliver orders, and they were considerably worked up about it and did not know what to do, and were willing to accede to almost anything in order to make a *modus*

vivendi with the Government to get their goods and to know how to enter their cases. As I have told you before, some of my cases had been advanced and I sent them to the merchant appraiser and my goods were passed as correct. Therefore I was not very vitally interested except that I was in sympathy with my brother importers, and that was the only reason that I signed the paper.

The embroidered goods were advanced all the way from ten to forty per cent. The Government had employed a special agent at that time. I believe that I have testified as to that.

Q. Was the 10% referred to in the resolution fixed for any particular time or was it the general average for the whole year?

Defendant's counsel objected to the question as indefinite and immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Were there, in 1887, commission-houses in St. Gall. which did the same thing for other importers or purchasers that is done by your house there for your house here?

73 Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. For what percentage of compensation would the same thing be done by your house in St. Gall. in 1887 in relation to the obtaining of these goods there and shipment here? For what percentage could that have been obtained to be done by other houses there?

Defendant's counsel objected to the question as immaterial; that the witness cannot testify as to what other people can get their business done for; that the witness is not shown to be qualified to answer any such question, and that no foundation has been laid for it. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Did you yourself purchase goods through a commission-house in St. Gall. as well as obtain them through your own house?

Defendant's counsel objected to the question on the same grounds as last stated. The court sustained the objection, and plaintiffs' counsel duly excepted.

Plaintiffs' counsel then called as a witness HENRY W. COOMBS, who, having been duly sworn, testified in substance as follows:

In 1885 I think that I was general appraiser in the United States service; I was appointed in July, 1883, and removed in December, 1886; my official station was at Baltimore, but I was on assign-
74 ment in New York; was familiar with the embroidery controversy between the Government and the importers. I was instructed by the Secretary of the Treasury to make an investigation into the methods of appraisement and reappraisement of embroideries, and requested by him to endeavor to ascertain some plan by which that controversy could be obviated. I made such an investigation to the best of my ability.

Q. Will you state whether or not there was any market value for cotton embroideries in Switzerland in 1885 or since that time?

Objected to as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

I remember receiving a communication from Mr. Muser. (Paper shown witness.) My recollection is not good enough to say that this is an exact copy of a letter I may have received from him which I forwarded to the Secretary of the Treasury, I think; my judgment is that it is a copy of it, but I cannot say positively that it is. My recollection is that all of the original papers that we received were forwarded with our report to the Secretary of the Treasury, at Washington; at any rate it is not in my possession.

I was present at the meeting held at the Manhattan hotel, and stated that "it is admitted, I believe, by all that there exists to-day no known market value for this article of merchandise" (referring to embroideries).

Plaintiffs' counsel then called as a witness MICHAEL F. MALOY, who, having been duly sworn, testified as follows:

75 I am and have been since January, 1886, a foreign buyer for Arnold, Constable & Co. of laces, embroideries, handkerchiefs, &c.; before that I was in the firm of Duden & Co., importers of the same class of goods excepting handkerchiefs; was with them for ten years; I have been in the habit of going to Switzerland on this business as foreign buyer for about seventeen years; am familiar with the course of business in St. Gall. with respect to embroideries; in 1887 finished embroideries were not kept in stock for sale in St. Gall. that I know of. Embroideries were ordinarily obtained in St. Gall. from samples that were submitted and from drawings that were submitted and from one's own suggestion; there were houses there which did business upon commission. Embroideries cannot be obtained in St. Gall. by direct purchase, but can be obtained from sample. I obtain them from samples submitted to me. The goods are made according to the qualities ordered, upon the samples submitted by the manufacturers, and also by the commission men; I base my orders and give my orders accordingly and am also on my own patterns; I furnish the patterns in some instances. When I buy from commission men they submit the samples to me, and after they take my orders they give them to the manufacturers to make; as a rule, the commission men buy the cloth and give it to the manufacturer to make.

Q. And the manufacturers do what?

Preliminary cross-examination by defendant's counsel as to competency.

76 I know from experience what the commission men do after I give them my orders. I have to see whether the thing is right or not during the process. I am supposed to try to find out whether they are excessive or not in charges. We do not generally agree with them about the price when we give the orders. The

prices are there, and then I submit it sometimes to settle the basis of whether the quantity of stitches is there to warrant their price. I have to control it in every way—the number of stitches, the mode of finishing, and the way of getting up the goods. I see that the price is right on the start, and then that the finish is correct. I see that my instructions are followed out all the way through. They do not do anything, unless by my instructions, even to the boxing, ticketing, and the general details throughout. I superintend the whole business. Of course, I do not remain there to do it. My instructions are there, and I see that a sample piece is brought out and done in this way I speak of. I do nothing further, except looking after the commission.

Defendant's counsel objected that the witness is not qualified to answer the question asked. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Will you state what was the usual rate of commission in St. Gall. in 1887 of these commission-houses?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

77 Q. Please state whether or not goods like those of Mr. Muser's and such as were imported in 1887 had a market value in St. Gall.

Defendant's counsel objected to the question as calling for a conclusion of the witness. The court sustained the objection, and plaintiffs' counsel duly excepted.

To my knowledge the finished goods were not obtained to any considerable extent in St. Gall. in any other way than from manufacturers and from commission-houses upon orders that were given. Embroideries in the finished condition were not reported in any account current or newspaper or price-list in 1887. The price of the stitching was reported. The finished were never reported.

Q. Were any goods of the patterns of Mr. Muser's goods for sale, or could they be obtained upon orders in St. Gall. or in any other way, except from Mr. Muser's house, in 1887?

Objected to by defendant's counsel on the ground that the witness, being a buyer for Arnold, Constable & Co., had no relation with and could know nothing of the business of Muser Brothers. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. For what services were commission-houses in St. Gall. paid a commission?

Defendants' counsel objected to the question as immaterial.
78 The court sustained the objection on the ground that the witness is not shown to be competent to testify as to what commission-houses in St. Gall. actually did. Plaintiffs' counsel duly excepted.

Q. When goods are obtained in the manner you have just stated what commission did you pay and what is the usual commission at St. Gall. for such services?

Defendant's counsel objected to the question as immaterial. The court sustained the objection on the ground that it had not yet been shown that what the commission merchants did in St. Gall. was in fact the same thing that plaintiffs' house did and which is represented by the difference in dispute here. Plaintiffs' counsel duly excepted.

Q. Do you know of your own knowledge what the commission-houses in St. Gall. actually did in 1887 for their commissions?

Defendant's counsel objected to the question as immaterial, and that no foundation has been laid for asking that question of this witness. The court sustained the latter objection, and plaintiffs' counsel duly excepted.

In 1887, when I ordered embroideries from a commission-house in St. Gall., the commission-house added three per cent. to the cost of the completed goods.

Q. What was that commission added for?

Defendant's counsel objected to the question as immaterial, and also that the witness is not shown to be qualified to answer.
79 The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Was or was not that commission a charge for procuring cloth, embroidering it, finishing it, and superintending?

Defendant's counsel objected to the question as immaterial and on the ground that witness has not been shown to be qualified to answer the question. The court sustained the objection, and plaintiffs' counsel duly excepted.

In 1885 I was a partner of the house of Duden & Co., importers of embroideries. I did not have any notification of the meeting at the Manhattan hotel.

The cost of the completed goods was the cost of the cloth, of the stitching, of the bleaching, of the cutting up into strips, of the ticketing, and of the boxing, and to the cost of the completed goods three per cent. was added for commission.

The commission men at St. Gall. had samples and varieties of embroidered goods from which any one in the dry-goods business could make a selection and could obtain them for the cost which I have stated, plus the three per cent.

Plaintiffs' counsel then called as a witness JACOB HIRSH, who, having been duly sworn, testified as follows:

In 1887 I was an importer of embroideries and laces. I was appointed merchant appraiser on an importation by plaintiffs here and acted as such. (Witness shown Exhibit 5*i*.) That is
80 the invoice. There was a difference of opinion between myself and the general appraiser. I recollect what took place

upon that examination and hearing and can state the grounds upon which the general appraiser made the addition to the invoice that he did make.

Q. Will you state them?

Objected to as immaterial, and that the proceedings of the appraisers are final and cannot be reviewed by this court.

The COURT: I will exclude this question as calling for more than a statement of facts. It calls for inferences and conclusions.

Plaintiffs' counsel duly excepted.

The general appraiser in this case, Mr. Downes, and I were together at the time of the appraisal and examination. The two reports which are annexed to this invoice were signed by me and the general appraiser at the same time.

Q. What, if anything, did he say to you on that occasion with respect to concurring in his report and as to the reasons for making the addition which he made to the invoiced value?

Defendant's counsel objected to the question as immaterial and incompetent. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. At the time that the general appraiser, Mr. Downes, signed this report did he make any statement to you explanatory of his reasons for doing so?

Defendant's counsel objected to the question as immaterial.

81 The COURT: I sustain the objection unless you state that you wish to show some fraud with regard to the appraiser.

PLAINTIFFS' COUNSEL: I want to show a mistake, but not fraud.

Q. Do you know, or not, whether upon that reappraisement the court appraiser or any of the examiners were present?

Q. Y[illegible]ndant's counsel objected to the question as immaterial, other in[illegible]dence. [illegible]OURT: Unless the statute requires the presence of the local C[illegible]iser or of the examiners I shall exclude the question.

Plaintiffs' counsel duly excepted.

Q. As matter of fact, if you know, state whether any amount was added to the invoice valuation by yourself or by the general appraiser as manufacturer's profit.

Defendant's counsel objected to the question as immaterial, and that the reappraisement speaks for itself as to what was done. The court sustained the latter objection, and plaintiffs' counsel duly excepted.

Plaintiffs' counsel then called as a witness HENRY SCHOONMAKER, who, having been duly sworn, testified as follows:

My business is buying and selling cotton embroideries and laces. In 1878 I was examiner of laces and cotton embroideries in the United States appraiser's stores; held that position for six or seven

years. I was present at the meeting held at the Manhattan
82 hotel in 1885. The object of the meeting was for the merchants to protest against the action of the appraisers in the mode they had adopted for appraising goods for the past few months. The principal action they protested against was the appraising of goods by sight or virtually guessing at the value of the goods and adding a certain amount on at the suggestion of the special agents and other parties. The course pursued by the appraisers up to a month or two prior to this meeting was similar to the one since pursued, I believe.

Q. While you were examiner were the lace and embroidery invoices passed upon the stitch value and the cost of cloth and of finishing, with the addition of ten per cent.?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Plaintiffs' counsel then read in evidence certain papers from the files of the custom-house relating to these reappraisements as follows:

83 Entry Aug't 9, '87.

EXHIBIT 5 B.

Per "S. S. La Normandie" (Havre).

Muser Bros.

Philip W. Dounes, general appraiser.
Jacob Hirsch, merchant appraiser.

Place of exportation: St. Gall., 23 July, '87.
Reappraised Sept. 8, '87.
D. P., Aug't 9, 1887.
From Muser Bros.

7524.

Mark and number.	Description of merchandise.	Francs. Per aune.	Per aune.	Per aune.
F [MB] 7872	One case cotton embroidery.			
4047	4/4, 35. Camb. ins..... 953 1/4	17		
4043	.....1,500 7/8	19		
120 *b*	Edg's..... 271 1/2	53		
" C	..... 165 1/2	97		
" F	..... 53 3/8	3.45		
" O	Allover..... 32 3/4	7.		
115 "	 26	4.60	Same.	
115 *g*	Edg's..... 54	2.45		
" F	..... 54 1/2	1.85		
" C	 194	52		
" *b*	..... 389 3/8	31		
" A	6/4, 28. Insertions..... 278 1/2	35		
	Francs..	1,836.55	1,836.55	1,836.55
	Add bleaching & finishing.....	92.40	92.40	92.40
	Francs..	1,928.95	1,928.95	1,928.95
Imp'r adds.	Imp'r adds value 3 %.....	57.85	57.85	57.85
	Francs..	1,986.80	1,986.80	1,986.80
	App'r adds.....	.....	134.90	
	Francs..	.....	2,121.70	1,986.80

Two report-.
Gen'l app'r advance, $6\frac{7}{8}$ +.
Merchant " " none.

Cert., $5.

Merchant app'r report.
Gen'l app'r report.

P. S.—Case 7872.
Ex.: G. C. T. S.

84 In the Matter of Reappraisement of Cott. Embroideries Exported from St. Gall. 23 Day of July, 1887, per La Normandie, by Muser Bros.

OFFICE OF GENERAL APPRAISER U. S.,
NEW YORK, — *Day of* ——, 1887, *ss:*

J. W. Billwiller, being duly sworn, says that he resides in Brooklyn, E. D., and is engaged in business as Billwiller Brothers in New York; that he has examined the articles of merchandise exhibited to him and described by marks and designations following, contained in Schedule A; that he is acquainted with the market value of the articles named in the principal markets of the country whence exported at the time of exportation, which is alleged to be the — day of ——, 188–, and that the prices hereinafter stated represent the true market value of the said articles on the day and at the place of exportation above mentioned.

J. W. BILLWILLER,
In Firm Billwiller Brothers.

Sworn before me this 8th day of September, 1887.
PHILIP W. DOUNE,
General Appraiser U. S.

SCHEDULE A, Referred to in the Foregoing.

Marks.	Numbers.	Description of goods.	Per aune, francs.
F [MB]	7872	One case cot. embroidery.....	
	4047	$\frac{4}{4}$, 35. Camb. ins.....	
	43		
	120 *b*	Edg.....	
	c		
	f		
	o	Alloyer.....	
	115 "		
	g	Edg.....	
	f		
	c		
	b		
	a	$\frac{6}{4}$, 28. Insert.....	

The above rates of 35 cs. for $\frac{4}{4}$ and 28 cs. for $\frac{6}{4}$ I find correct. To these has to be added cost of cloth, bleaching, and finishing. On the total we add 10 % as manufacturer's profit, according — the decision of the general appraiser.

JOHN WERNER BILLWILLER,
In Firm Billwiller Brothers.

85 In the Matter of Reappraisement of Cotton Embroideries Exported from St. Gallien 23 Day of July, 1887, per La Normandie, by Muser Bros.

OFFICE OF GENERAL APPRAISER U. S.,
NEW YORK, *Sept'r 8th*, 1887, *ss:*

David Schoenfeld, being duly sworn, says that he resides in the city of New York and is engaged in business as merchant in N. Y. city; that he has examined the articles of merchandise exhibited to him and described by marks and designations following, contained in Schedule A; that he is acquainted with the market value of the articles named in the principal markets of the country whence exported at the time of exportation, which is alleged to be the 23rd day of July, 1887, and that the prices hereinafter stated represent the true market value of the said articles on the day and at the place of exportation above mentioned.

DAVID SCHOENFELD.

Sworn to before me this 8th day of Sept., 1887.

PHILIP W. DOUNE,
General Appraiser U. S.

SCHEDULE A, Referred to in the Foregoing.

Marks.	Numbers.	Description of goods.	Per aune, francs.
F [MB]	7872	One case cott. embroidery.....	
	4047	$\frac{4}{4}$, 35. Camb. ins.....	
	43		
	120 *b*	Edg's.....	
	120 *c*		
	120 *f*		
	" *o*		
	115 "	Allover.....	
	" *g*		
	" *f*	Edg's.....	
	" *c*		
	" *b*		
	" *a*	$\frac{6}{4}$, 28. Insert.....	

The above prices, 35 ctm. for $\frac{4}{4}$ and 28 ctm. for $\frac{6}{4}$, are correct for stitching. The price for the cloth must be added to make the cost. We add to all our cost 10 per cent. for a manufacturer's profit. This we only do under compulsion.

86 In the Matter of Reappraisement of Cotton Embroideries Exported from St. Gall. 23d day of July, 1887, per S. S. La Normandie, by Muser Bros.

OFFICE OF GENERAL APPRAISER U. S.,
NEW YORK, *Sept. 8th*, 1887, *ss:*

Herman Neuberger, being duly sworn, says that he resides in the — —— and is engaged in business as — in city of N. Y.; that he has examined the articles of merchandise exhibited to him and described by marks and designations following, contained in Schedule A; that he is acquainted with the market value of the articles named in the principal markets of the country whence exported at the time of exportation, which is alleged to be the 23d day of July, 1887, and that the prices hereinafter stated represent the true market value of the said articles on the day and at the place of exportation above mentioned.

HERMAN NEUBERGER.

Sworn before me this 8th day of Sept., 1887.

PHILIP W. DOUNES,
General Appraiser U. S.

SCHEDULE A, Referred to in the Foregoing.

Marks.	Numbers.	Description of goods.	Per aune, francs.
F [MB]	7872	One case cotton embroidery.....	
	4047	$\frac{4}{4}$, 35. Camb. ins.....	
	4043		
	120 *b*	Edg's.....	
	120 *c*		
	" F		
	" O	Allovers.....	
	115 "		
	115 *g*	Edg's.....	
	115 F		
	" C		
	" *b*		
	" *a*	$\frac{6}{4}$, 28, Insert.....	

After examining the goods above mentioned I find the stitch prices of 35 for $\frac{4}{4}$ & 28 for $\frac{6}{4}$ to be correct. To this, as well as to the bleaching expenses and to the cloth, we add 10 % manufact. profit, under compulsion.

H. NEUBERGER,
Of L. & H. Neuberger & Co.

87 Muser Bros. "La Normandie," Havre. Entry Aug. 9, '87.

Marks.	Numbers.	Description of goods.	Total francs.
		D. P., Aug. 9, '87, #7524. from same. St. Gall., July 23, '87.	
F [MB]	7872	Case cotton emb'd'y.	

	Total.	Total.
7872	1,836.55	1,836.55
Add bleaching & finishing	92.40	92.40
	1,928.95	1,928.95
Imp. adds val., 3 %	57.85	57.85
Francs	1,986.80	1,986.80
App'r adds		134.90
Francs	1,986.80	Francs 2,121.70

Charges added & deducted:
Making up & ornaments.... 21. –

88 JACOB HIRSH, being further examined as a witness for plaintiffs, testified:

These papers which have just been offered in evidence were before the general appraiser and myself before we signed the report on this reappraisal.

Q. What examination did you make of the goods covered by these invoices?

Defendant's counsel objected to the evidence as immaterial, and that no claim is made in the protest that the goods were not properly examined. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Did the appraising board send for any of the assistant appraisers, or for the assistant appraiser who had passed this invoice in the local appraiser's office?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

I knew the assistant appraiser, Mr. Kent; he is now dead.

Q. Did he come before the appraiser's board and make any statement as to the grounds upon which the local appraiser had advanced the invoice?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Was any other testimony considered by the board of appraisement than what is contained in this record (Exhibit 5 B).

89 Defendant's counsel objected to the question as immaterial The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Please examine Exhibit 5 B and state, if you can, whether it contains a complete record of the proceedings upon the reappraisement of these goods?

Objected to by defendant's counsel as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Why did you decline to join with the general appraiser in his report?

Objected to by defendant's counsel as immaterial.
The COURT: I will exclude the question.
Plaintiffs' counsel duly excepted.

Q. What was the basis of your judgment on which you signed the report, saying, "Entry sustained," that entry having added three per cent. to the invoice?

Objected to by defendant's counsel as immaterial. The court sustained the objection, and plaintiffs' counsel duly excpted.

DAVID SCHOENFELD was called as a witness before the board:

Q. Did he testify upon that examination that "the above prices, thirty-five centimes for $\frac{4}{4}$ and twenty-eight centimes for $\frac{4}{4}$, are correct for stitching, and the price for the cloth must be added to make the cost. We add to our cost ten per cent. for manufacturer's profit. This we only do under compulsion." Was any statement
90 made following that testimony, by the general appraiser, to the effect that that was the rule and must be followed?

Objected to by defendant's counsel as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Plaintiffs' counsel then called as a witness JAMES C. MCCARTHY, who, having been duly sworn, testified as follows:

I reside in Boston; am connected with the house of Jordan, Marsh & Co.; have been with them for seventeen years. For eleven years I have been a buyer of laces and embroideries. During that time I have visited St. Gall. once or twice a year. Machine embroideries are produced in St. Gall. I obtain them by buying them from the designs furnished by the manufacturers or commissionaires. Samples are submitted to me—some designs on paper and some that are already manufactured—and from these I select what I need for my trade, which is generally over a medium to a finer grade than is generally used, and then they are manufactured to my order. I pay the stitch rate for them, and to the manufacturer or commissionare, if I use them, I pay three per cent. for the goods when already embroidered, bleached, finished, and packed, and I pay for the packing, the casing, and the tickets extra. I pay the cost of the cloth in the gray, and the stitch rate, whatever it may be at the time, and for the bleaching and finishing, and to that three per cent.

is added. I consider that that is the actual cost of the goods
91 in the gray, and from that all expenses in addition to that is for the bleaching and packing.

Being cross-examined by defendant's counsel:

All that I pay for besides the cost of stitching, bleaching, and finishing and the three per cent. is for the casing, and the packing is generally charged in connection with that, and for the tickets on our goods. The designs are submitted to me, and I select from those designs what I think suits me; do not have to pay extra for that; the only difference in connection with that is for extra-fine goods that I have made or manufactured. There is one manufacturer that I deal largely with, and to that manufacturer, for all expenses and everything, we pay him, under an agreement, five per cent.; that is for extra goods that we want particular care taken of and designs which are strictly ours and which no other house can have. As our business is largely retail, we have to have these designs which are specially made for us, and for that reason we pay this man for giving us these designs that nobody else can buy five per cent., which is two per cent. more than the regular charge. If a house was doing a very large business, I believe that any house who would give them a certain quantity could have any design made for three per cent.

The COURT: If any one wanted extra designs of their own gotten up, of a higher grade, they could get them by paying a higher price, if they used a large enough quantity of them?

A. We have had a contract or agreement with the manu-
92 facturers for years to pay but five per cent. I do not know as any one else could get that same manufacturer.

By defendant's counsel:

We buy from probably six houses. We buy from Muser Brothers here.

Plaintiffs' counsel read in evidence the reappraisement records in the other cases as follows:

93 Entry Oct. 5, '87.

EXHIBIT 1 B.

Per S. S. "La Bretagne" (Havre).

Muser Bros.

Geo. V. Brower, general appraiser.
E. E. Eames, merchant appraiser.

Place of exportation: St. Gall., Sept. 17th, 1887.
Reappraised Oct. 24, '87.

Mark and number.	Description of merchandise.	Total.	Total francs.	Total.
F [MB] 7895–'98	Four cases cotton embroidery.			
7895–'7	Cot. emb'd'y as per inv.—			
	Francs..	9,397.24	9,397.24	9,397.24
	Add bleaching & finishing...	415.80	415.80	415.80
	Francs..	9,813.04	9,813.04	9,813.04
	Less allowance for bad work..	9.98	9.98	9.98
	Francs..	9,803.06	9,803.06	9,803.06
	Imp'r adds 3 % on 9,813.04..	294.39	294.39	979.78
	Francs..	10,097.45	10,097.45	
	App'r adds.....	.....	685.39	
		Francs..	10,782.84	10,782.84

Bal. not considered.
Chgs. added & deducted, 94.50.

Advance sustained by gen. appraiser.
Merchant app'r adds 6 %..... 9,803.06
588.18

Fcs... 10,391.24

Merchant app'r's report.
General app'r's report.

Gen'l app'r advance, $6\frac{7}{10}$.
Merchant " " $2\frac{9}{10}$.

P. S.—Case 7896.
Ex.: G. C. T. S.

Cert., $5.

94 "Port of New York, office of U. S. General Appraiser, N. W. corner of Washington and Hubert streets.

OCT. 24TH, 1887.

Hon. Geo. V. Brower, gen'l app'r.

SIRS: To avoid delay, the cases not having reached the appraiser's stores, we respectfully request that our reappraisement per La Bretagne may be held on samples submitted by us, which are correct representations of the goods covered by the invoice in question, we being satisfied to have the reappraisement made on such samples.

Respectfully, MUSER BROS."

Marks.	Numbers.	Description of goods.
F [MB]	7895–'7	Three cases cotton emb'd'y.

The marked value of these goods consist- of—
1. The price of the cloth.
2. 35c. per 100 stitches to embroider the same, to which, as the above goods are bleached, should be added the finishing expense.

ISIDOR NEUBERGER.

"Oct. 12, '87."

In the Matter of Reappraisement of Cotton Embroideries Exported from St. Gall. 17 Day of Sept., 1887, per La Bretagne, by Muser Bros.

OFFICE OF GENERAL APPRAISER U. S.,
NEW YORK, *Oct. 24th*, 1887, *ss:*

David Schoenfeld, being duly sworn, says that he resides in the city of New York and is engaged in business as merchant in N. Y. city; that he has examined the articles of merchandise exhibited to him and described by marks and designations following, contained in Schedule A; that he is acquainted with the market value of the articles named in the principal markets of the country whence exported at the time of exportation, which is alleged to be the 17th day of Sept., 1887, and that the prices hereinafter stated represent the true market value of the said articles on the day and at the place of exportation above mentioned.

DAVID SCHOENFELD.

Sworn before me this 24th day of Oct., 1887.

GEO. V. BROWER,
Gen'l Appraiser U. S.

95 SCHEDULE A, Referred to in the Foregoing.

Marks.	Numbers.	Description of goods.
F [MB]	7895–'7	Three cases cott. embroidery.

The prices for $\frac{4}{4}$ should be calculated at 35 ctm. pr. 100 stitches. To this the price for cloth must be added; then bleaching and finishing.

DAVID SCHOENFELD.

Muser Bros. "La Bretagne," Havre. Entry Oct. 5, '87.

Marks.	Numbers.	Description of goods.	Aune & total.
F [MB]	7895–7898	D. P., Oct. 5, '87, # 3064. from same. St. Gall., Sept. 17, '87.	Francs.
		Cotton embroidery. Same.	
Cases.	Total.		
7895	3,231.10		
7896	2,984.79		
7897	3,181.35		
	9,397.24	.....	9,397.24
Add bleaching & finishing...	415.80	.....	415.80
	9,813.04	.....	9,813.04
Less allowance for bad work..	9.98	.....	9.98
	9,803.06	.....	9,803.06
Imp. adds 3 % on 9,813.04...	294.39	.....	294.39
	10,097.45	.....	10,097.45
Francs..	10,097.45	App'r adds.....	685.39
		Francs..	10,782.84

Bal. not considered.

Imp. add'n 7 % (nearly) on 9,803.06

237.40
217.10
230.89

685.39

Aune.

Allowance: Case- # 7895, # 26678, 161 at 24.10 %, 38.64 = 3.86
7897, 218 D, 133 " 46.10 %, 61.68 = 6.12

9.98

Charges added & deducted ... 37.50
Making up & ornaments ..... 28.
29.

94.50

96 Entry Oct. 10, '87.

EXHIBIT 2 B.

Per "La Bourgogne" (Havre).

Muser Bros.

Philip W. Dounes, general appraiser.
Edw. E. Eames, merchant appraiser.

Place of exportation: St. Gall., 24 Sept., '87.
Reappraised Octo. 28, 1887.
D. P., Oct. 10, 1887.
From Muser Bros.

Mark and number.	Description of merchandise.		Total.	Total.
			Per aune.	
F [MB] 7900–'04	Five cases cotton embroidery.	Francs.	Francs.	
	Cotton emb'd'y as per inv...	13,669.34	13,669.34	13,669.34
	Add bleaching & finishing...	642.45	642.45	642.45
	Francs..	14,311.79	14,311.79	14,311.79
	Less badly worked.....	31.40	31.40	31.40
	Francs..	14,280.39	14,280.39	14,280.39
	Imp'r adds *imp'r adds* value, 3 % on 14,311.79.....	429.35	429.35	429.35
	Francs..	14,709.74	14,709.74	14,709.74
	App'r adds total.....	.....	995.66	995.66
			15,705.40	15,705.40

Chgs. added & deducted, making up & ornaments, 157.10.

Net am't inv..... 14,280.39
Add 6 %..... 856.81

Fcs... 15,137.20

Cert., $5.

Gen'l app'r advance, 6.8.
Merchant " " 2.9.

P. S.—Case 7901.
Ex.: G. C. T. S.

Merchant app'r report.
Gen'l app'r report.

97 Oct. 19, '87.

In the Matter of Reappraisement of Cotton Embroidery Exported from St. Gall. 24 Day of Sept., 1887, per S. S. "La Bourgogne," by Muser Bros.

OFFICE OF GENERAL APPRAISER U. S.,
NEW YORK. — *Day of* ——, 1887, *ss:*

Andrew Davidson, being duly sworn, says that he resides in the city of New York and is engaged in business as salesman in city of New York; that he has examined the articles of merchandise exhibited to him and described by marks and designations following, contained in Schedule A; that he is acquainted with the market value of the articles named in the principal markets of the country whence exported at the time of exportation, which is alleged to be the 24th day of Sept., 1887, and that the prices hereinafter stated represent the true market value of the said articles on the day and at the place of exportation above mentioned.

ANDREW DAVIDSON.

Sworn before me this 26th October, 1887.

GEO. V. BROWER,
General Appraiser U. S.

SCHEDULE A, Referred to in the Foregoing.

Marks.	Numbers.	Description of goods.	Per aune, francs.
F [MB]	7900–'04	Five cases cotton emb'd'y.	
		4206.....	5.20
		4199.....	3.00
		4203.....	5.00
		26620.....	28
		Nett finished.	

Muser Bros. "La Bourgogne," Havre. Entry Oct. 10, '87.

Marks.	Numbers.	Description of goods.		Total francs.
F [MB]	7900			
	7904	D. P., Oct. 10, '87, from same.		
		St. Gall., Sept. 24, 1887.		
		Cases cotton embroidery.		
		Total. Same.		
	7900	3,651.21		
	7901	1,636.89		
	7902	3,541.73		
	7903	3,529.76		
	7504	1,309.75		
		13,669.34.....	.....	13,669.34
		Add bleaching & finishing, 642.45	.....	642.45
		14,311.79	.....	14,311.79
98				
		14,311.79		14,311.79
	Case.	Less badly worked, 10 %		
	7901	# 4206, 3½c., 3.10.....	1.08	
	7903	262 B.....	3.57	
		" B.....	10.71	
		" C.....	11.47	
		" O.....	3.24	
	7904	81 SII, 3½, 10 %, 3.80...	1.33	
			31.40	31.40
			14,280.39	14,280.39
		Imp. add val., 3 % on 14,311.79	429.35	429.35
			14,709.74	14,709.74
		App'r adds total.....	.....	995.66
		Francs..	14,709.74	15,705.40

App'r's add'n nearly 7 % on 14,280.39.

Charges added & deducted:

Making up & ornaments, 157.10.

99 Entry Sept. 19, '87.

EXHIBIT 3 B.

Per S. S. "La Champagne" (Havre).

Muser Bros.

Geo. V. Brower, general appraiser.
E. E. Eames, merchant appraiser.

Place of exportation: St. Gall., Sept. 3, 1887.
Reappraised Oct. 18, '87.
D. P., Sept. 19, 1887.
From Muser Bros.

12156.

Mark and number.	Description of merchandise.	Total.	Total francs.	Total.
F [MB] 7883–'5 Part 7883	Three cases cotton emb'd'y, &c. Cambric & swiss sets, &c.— Francs..	1,667.71		
7884	" "	4,627.74	Same.	
	Francs..	6,295.45	6,295.45	6,295.45
	Add bleaching & finishing	244.70	244.70	244.70
	Francs..	6,540.15	6,540.15	6,540.15
	Allowance, badly worked frcs..	39.32	39.32	39.32
	Francs..	6,500.83	6,500.83	6,500.83
	Gen'l app'r adds 10 %. Imp'r adds value, 3% on 6,500.83	195.02	195.02	650.08
	Francs..	6,695.85	6,695.85	7,150.91
	App'r adds 7 % on 6,500.83	.....	445.02	
	Francs..	.....	7,150.87	7,150.91

Bal. not cons'd	6,500.83
Mer. app'r adds 6 %	390.05
Francs..	6,890.88

Chgs. added & deducted, making up, ornaments, 61.10.
Advance sustained.
Gen'l appraiser advance, 6.7.
Merchant " " 2.9.

Merchant app'r report.
General app'r report.

P. S.—Case 7883.
Ex.: G. C. T. S.

Cert., $5.

100 In the Matter of Reappraisement of Cott. Embroideries Exported from St. Gall. 3 Day of Sept., 1887, per "La Champagne," by Muser Bros.

OFFICE OF GENERAL APPRAISER U. S.,
NEW YORK, — *Day of* ——, 1887, *ss:*

Chas. Haager, being duly sworn, says that he resides in the city of New York and is engaged in business as Albert, Haager &

Waldburger in city of N. Y.; that he has examined the articles of merchandise exhibited to him and described by marks and designations following, contained in Schedule A; that he is acquainted with the market value of the articles named in the principal markets of the country whence exported at the time of exportation, which is alleged to be the 3rd day of Sept., 1887, and that the prices hereinafter stated represent the true market value of the said articles on the day and at the place of exportation above mentioned.

CHAS. HAAGER.

Sworn — before me this 7th day of Oct., 1887.

GEO. V. BROWER,
General Appraiser U. S.

SCHEDULE A, Referred to in the Foregoing.

Marks.	Numbers.	Description of goods.	Per total francs.
F [MB]	7883–'4	Two cases cott. embroidery.	
	Part 7883 / 7884	Cotton embroidery as p'r inv. Bal. not conside'd.	Total.
	119 AII	.....	70
	219 AI	.....	60
	219 A2	.....	85
	219 B	.....	28½
	219 C	.....	53
	219 D	.....	90
	219 E	.....	120

The above prices I estimate to represent cloth, stitching, finishing, & 10 % added.

101 In the Matter of Reappraisement of Cotton Embroideries Exported from St. Gall. 3 Day of Sept., 1887, per "La Champagne," by Muser Bros.

OFFICE OF GENERAL APPRAISER U. S.,
NEW YORK, — *Day of* ——, 1887, ss:

I, John Werner Billwiller, being duly sworn, says that he resides in the —— and is engaged in business as Billwiller Brothers in city of N. Y.; that he has examined the articles of merchandise exhibited to him and described by marks and designations following, contained in Schedule A; that he is acquainted with the market value of the articles named in the principal markets of the country whence exported at the time of exportation, which is alleged to be the 3rd day of Sept., 1887, and that the prices hereinafter stated

represent the true market value of the said articles on the day and at the place of exportation above mentioned.

JOHN WERNER BILLWILLER.

Sworn — before me this 7th day of October, 1887.

——— ———,
General Appraiser U. S.

SCHEDULE A, Referred to in the Foregoing.

Marks.	Numbers.	Description of goods.	Per total francs.
F [MB]	7883–'4 Part 7883 7884	Two cases cotton emb'd'y... Cotton emb'd'y as per inv..	Total

Bal. not cons'd.

To the stitch rate we add cost of cloth, bleaching, and finishing, and on the total 10 % as manufacturer's profit.

102 In the Matter of Reappraisement of Cotton Embroideries Exported from St. Gall. 3 Day of Sept., 1887, per "La Champagne," by Muser Bros.

OFFICE OF GENERAL APPRAISER U. S.,
NEW YORK, *Oct. 7th*, 1887, *ss:*

David Schoenfeld, being duly sworn, says that he resides in the city of New York and is engaged in business as merchant in N. Y. city; that he has examined the articles of merchandise exhibited to him and described by marks and designations following, contained in Schedule A; that he is acquainted with the market value of the articles named in the principal markets of the country whence exported at the time of exportation, which is alleged to be the 3 day of Sept., 1887, and that the prices hereinafter stated represent the true market value of the said articles on the day and at the place of exportation above mentioned.

DAVID SCHOENFELD.

Sworn — before me this — day of ——, 188–.

——— ———,
General Appraiser U. S.

SCHEDULE A, Referred to in the Foregoing.

Marks.	Numbers.	Description of goods.	Per total francs.
F [MB]	7883–'4 Part 7883 } 7884 }	Two cases cotton emb'y.... Cott. embroidery as p'r inv.	Total.

Bal. not considered.

The stitching price for $\frac{4}{4}$, 35 ctm. p'r 100 stitches.
" " $\frac{4}{4}$, 28 " "

To this the cloth must be added, then the bleaching and finishing.

103 Muser Bros. "La Champagne," Havre. Entry Sept. 19, '87.

Marks.	Numbers.	Description of goods.		Per aune, francs.
	D. P., Sept. 19, '87, from same.	#12156.		
F [MB]	7883–'5. Cases.	St. Gall., Sept. 3, '87. Cotton embroidery. Mfs. cotton emb'd.		
	Total.	Same.		
Part 7883		1,667.71		
7884		4,627.74		
		6,295.45		6,295.45
Add bleaching, finishing		244.70		244.70
		6,540.15		6,540.15
Allowance badly worked fcs		39.32		39.32
		6,500.83		6,500.83
Imp. adds val., 3 % on 6,500.83		195.02		195.02
		6,695.85	App'r adds 7 % on 6,500.83	6,695.85 455.02
		Francs.... 6,695.85	Francs ..	7,150.87

Bal. not considered.

Charges added & deducted:

Making up & ornaments	27.90	
	33.20	
	61.10	

Allowance, case # 7884:

218 E, 3½ d., 10 % c., .75.....	2.62		26
218 F, 7 " 1.20.....	8.40		84
218 *d*II, 273 20 % .70.....	191.10		38.22
			39.32

104 EXHIBIT 6 B.

Entry Sept. 7, 1887.

Per S. S. "La Normandie" (Havre).

Muser Bros.

Geo. V. Brower, general appraiser.
E. E. Eames, merchant appraiser.

Place of exportation: St. Gall., Aug't 20, '87.
Reappraised Oct. 18, 1887.
D. P., Sept. 7, 1887, from Muser Bros.

2878.

Mark and number.	Description of merchandise.	Total.	Total francs.	Total.
F [MB] 7880–'81	Two cases cot. emb'd'y.			
	Cot emb'd'y as per inv.—total ...	9,170.85	9,170.85	9,170.85
	Add bleaching & finishing	215.55	215.55	215.55
	Francs..	9,386.40	9,386.40	9,386.40
	Less making up case 7880.....	35.10	35.10	35.10
	Francs..	9,351.30	9,351.30	9,351.30
	Gen'l app'r adds 10 % ; imp'r adds 3 % on 1,876.22.....	56.29	56.29	187.32
	Francs..	9,407.59	9,407.59	9,538.62
	App'r adds.....	.....	131.03	
			9,538.62	9,538.62
	Mer. app'r adds 6 % on 1,876.22.	.....	9,351.30 112.57	
	Fcs...	.....	9,463.87	

Chgs. added & deducted, 57.50
Advance sustained.
General app'r advance, $1\frac{3}{10}$.
Merchant " " $\frac{5}{10}$.

P. S.—Case 7881.
Ex.: G. C. T. S.

Mer. app'r's report.
Gen'l appraiser's report.

Cert., $5.

105 In the Matter of Reappraisement of Cotton Embroidery Exported from St. Gall. 20 Day of Aug., 1887, per La Normandie, by Muser Bros.

OFFICE OF GENERAL APPRAISER U. S.,
NEW YORK, *September 28th*, 1887, *ss:*

J. W. Billwiller, being duly sworn, says that he resides in the —— —— and is engaged in business as Billwiller Brothers in N. Y. city; that he has examined the articles of merchandise exhibited to him and described by marks and designations following, contained in Schedule A; that he is acquainted with the market value of the articles named in the principal markets of the country whence exported at the time of exportation, which is alleged to be the 20th day of Aug., 1887, and that the prices hereinafter stated represent the true market value of the said articles on the day and at the place of exportation above mentioned.

JOHN WERNER BILLWILLER.

Sworn — before me this 28th day of September, 1887.

—— ——.

SCHEDULE A, Referred to in the Foregoing.

Marks.	Numbers.	Description of goods.	Per aune, francs.
F [MB]	7880–'1	Two cases cotton emb'd'y.....	
		Dis..	— %
		" ..	— %.

I have to state that to the stitch rate we add cost of cloth, bleaching, and finishing, and to the total 10 % as manufacturer's profit, the latter being demanded by the custom-house.

106 In the Matter of Reappraisement of Cotton Emb'd'y Exported from St. Gall. 20th Day of Aug., 1887, per La Normandie, by Muser Bros.

OFFICE OF GENERAL APPRAISER U. S.,
NEW YORK, — *Day of* ——, 1887, *ss:*

Chas. Haager, being duly sworn, says that he resides in the city of New York and is engaged in business as Albert, Haager & Waldburger in N. Y. city; that he has examined the articles of merchandise exhibited to him and described by marks and designations following, contained in Schedule A; that he is acquainted with the market value of the articles named in the principal markets of the country whence exported at the time of exportation, which is alleged to be the 20th day of Aug., 1887, and that the prices herein-

after stated represent the true market value of the said articles on the day and at the place of exportation above mentioned.

CHAS HAAGER.

Sworn — before me this — day of ——, 1887.

—— ——.

SCHEDULE A, Referred to in the Foregoing.

Marks.	Numbers.	Description of goods.	Per aune, francs.
F [MB]	7880–'1	Two cases cotton emb'd'y.....	
			68
			68
			23½
			23½
		Dis.... — %	
			32
		" ..... — %	
			21
			64

The above is an estimate, as I think the goods can be bought in the finished state, representing the price of cloth, stitching, finishing, and 10 % added.

107 Muser Bros. "La Normandie," Havre. Entry Sept. 7, '87.

Marks.	Numbers.	Description of goods.		Total francs.
		D. P., Sept. 7, '87, # 2878. from same.		
F [MB]	7880			
	7881	St. Gall., Aug. 20, '87.		
	Cases	Cotton lace.		
		Mfs. silk.		
		Cotton emb'dy.		
	Total.		Same.	
	7880		5,438.40	
	7881		3,732.45	
			9,170.85	9,170.85
	Add bleaching & finishing..		215.55	215.55
			9,386.40	9,386.40

Less making up case 7880.....	17.10		
	18.		
	35.10		35.10
	9,351.30		9,351.30
Imp. adds 3 % on 1,876.22..	56.29		56.29
	9,407.59		9,407.59
		App'r adds	131.03
Francs....	9,407.59	Francs..	9,538.62

Charges added & deducted:

Making up & ornaments	24.90	
	23.	
	2.10	
	1.50	
	51.50	
Case 7881. Imp. adds 3 % on items 26721 / 90 SII		1,537.08
Bleaching, finishing		99.70
$\frac{3}{5}\frac{6}{2}\frac{1}{3}$		231.39
Bleaching, finishing		8.05
		1,876.22

108 EXHIBIT 7.

In the Matter of the Reappraisement of Cotton Embroideries Imported by Muser Bros.

Before Hon. Geo. V. Brower, U. S. general appraiser; John Gibb, Esq., merchant appraiser.

NEW YORK, *May 25th*, 1887.

#6735. Cotton embroidery imported by steamship "La Normandie" from St. Gall. by Muser Bros., entered May 11, 1887.

Mr. Charles Curie is present as agent for the importers.

Mr. Curie desires to know whether the board—the respective members of the board—consider it their duty to make a market value of themselves, independent of any evidence of purchase and sales of like goods abroad, other than those furnished by the invoices in question and independent of the provisions of section 9, act of March, 1883.

The GENERAL APPRAISER: The general and merchant appraiser will use all reasonable ways and means for ascertaining the market value of the merchandise in question.

Mr. CURIE: That is not an answer to my question.

The GENERAL APPRAISER: We shall ascertain the true market value as provided by the statute and regulations concerning the same.

Mr. CURIE: That is vague and does not give the information required, and I object to the answer as indefinite. I ask you to answer it.

The GENERAL APPRAISER: I have. I shall not appraise
109 these goods to suit Mr. Muser, and I shall certainly do so according to law and leave it to be determined hereafter whether it has been properly done.

Mr. MUSER is sworn by the general appraiser and questioned by Mr. CURIE:

Q. Mr. Muser, you are an importer of these goods?
A. Yes, sir.
Q. And you imported these particular goods?
A. Yes, sir.
Q. At the rate in this invoice?
A. Yes, sir.
Q. In the open market, or did you have them made?
A. We had them made.
Q. Why did you not buy them in the open market?
A. Because we could not find them—such goods—in the open market.
Q. To the best of your knowledge and belief, you could not buy like goods in the open market?
A. No, sir.
Q. Does this invoice represent the actual cost of those goods to you?
A. With the expenses, the addition of the 10 per cent., it does.
Q. How does that 10 per cent. additional come to be on your invoice for manufacturer's profit?
A. We were compelled to have our own goods passed through the appraiser's office to have this advantage as a so-called manufacturer's profits.
Q. None of that 10 per cent. was paid by you?
A. No, sir.
Q. In declaring your value on entry, did you declare the 10 per cent. as part of the entry?
A. I did not. I deducted it.
110 Q. And the declared value as made by you is the actual value of the goods?
A. Yes, sir.
Q. That includes the cost of material?
A. Everything—stitching, finishing, laundrying, packing, and so forth.
Q. Everything for shipment?
A. Yes, sir.

By the general appraiser:

Q. Mr. Muser, what is the first step taken in the production of these goods under reappraisement?

A. I made a contract with the manufacturer to make certain patterns at certain prices agreed upon.

Q. Did you buy this material in the grey?

A. From the manufacturer of the grey.

Q. What did you pay for it in the grey, and where did you purchase the cloth upon which the embroidery is made?

A. I believe it is bought from a Manchester agent.

Q. You purchased it in Manchester?

A. I don't know.

Q. Was it purchased in Manchester through your office in St. Gall. and then shipped to Switzerland?

A. Maybe.

Q. In all probability, was it purchased by your house in Manchester?

A. In all probability, in St. Gall.

Q. Do you not know whether it was in Manchester or in Manchester by your agent in St. Gall.?

A. That's it.

Q. What did you pay for the material in the grey?

A. The market value.

Q. What was the market value?

A. I can't tell you. I don't know the prices of the cloth in the grey.

111 Q. After the goods were purchased in the grey what was done with them?

A. We then sell the goods to the manufacturers with whom we made contracts for stitching.

Q. Do you know whether or not you sell the grey cloth to them at the same price you pay?

A. My buyer can better answer that question. My impression is that we sell at the same price that we pay. Our only object in buying and selling it to the different manufacturers is in order to have the same quality of the cloth in our line of goods. If we did not do so and allowed each manufacturer to furnish his own cloth, we would be likely to have as many different qualities of cloth as there are manufacturers working in their line.

Q. You deliver this cloth to the manufacturers at St. Gall.?

A. Yes, sir.

Q. What is the next step?

A. He delivers the goods.

Q. He makes them, does he not?

A. Yes; that is not my step; the manufacturer does that. My next step is to receive the goods.

Q. Is it not in giving him some order?

A. After making the contract.

Q. What is that contract?

A. To make certain patterns of embroidery at a certain agreed price and in certain quantities.

Q. Are those patterns made exclusively for you?
A. Yes, sir.
Q. Can the merchant appraiser have those same patterns?
A. No, sir; he could not.
Q. Who makes the designs?
112 A. We buy them in Paris or St. Gall. and have a designer of our own—our office has. I had one here several years ago.
Q. What is the contract you make with the manufacturer of these embroideries—to make it at so much per stitch?
A. Yes, sir.
Q. What was your agreement with him for this per 100 stitches?
A. The invoice will show. I can only speak of my general knowledge of the way the affairs of the office are conducted.
Q. You only have an office at St. Gall.?
A. Yes, sir.
Q. No warehouse for storing these goods?
A. Merely for the finishing, I suppose.
Q. From your knowledge of that, do you have an office to finish them?
A. I suppose they must have sufficient room to cut them up and finish them.
Q. What is the next step?
A. The manufacturer delivers the goods to us—to our office.
Q. What do you do with them next?
A. We have them bleached and finished and invoiced and shipped.
Q. Will you describe the process of bleaching, and where it is done?
A. By a bleacher.
Q. On the premises?
A. No; by a man who makes it his special business.
Q. When you give these goods to the bleacher, does he come to your office for them?
A. I don't know whether we send them to him.
Q. He bleaches them at so much?
A. At market rates.
Q. And then he returns them again to you?
A. Yes, sir.
Q. Well, what is the next step?
113 A. I believe it is to cut them into proper lengths?
Q. Is the cutting done on your premises?
A. I suppose so.
Q. When this invoice was prepared, did it include the cost of the goods in the grey, the price per 100 stitches, the bleaching, the finishing, and the cutting?
A. Yes, sir.
Q. Did it include anything else?
A. The 10 per cent. excluded.
Q. Nothing else whatever was put in?
A. Yes (nothing else).

Q. Were office expenses put in?
A. No, sir.
Q. Were agents' expenses?
A. That would be part of the office expenses.
Q. Then neither the agents' expenses nor that of other employees is put into the price of these goods?
A. No, sir.
Q. Can you purchase these goods in the open market at that price?
A. You cannot buy the same patterns, but similar goods.
Q. At the same price?
A. At the same stitch rates.
Q. Will you please explain how it is possible to sell these goods at the same price when you say you do not add the cost of maintaining an office and the agent's expenses?
A. Because the purchasing by those who have no office at St. Gall. is done through commission-houses, and the work that is performed by my office in St. Gall. is performed for these buyers by the commission merchants, who charge a commission for
114 services, which generally, as far as I know, is 3 per cent.
Q. That includes the cost of the designer in Paris or any other part of the country?
A It may or may not; I don't know.
Q. You think a man on 3 per cent. can keep an office, have designers, and shipping to various places?
A. He would charge all this besides. It is only office expenses.
Q. That would not include the price of designs and cutting them up, would it?
A. I think it would depend on the quantity of the goods produced.
Q. Is there any commission merchant in St. Gall., to your knowledge, who is furnishing designs, taking the goods in the grey, taking them to the houses to be manufactured, from there again to be bleached, and from the bleacher again to be cut? Is there any man doing that on 3 per cent. in St. Gall.?
A. Lots of them; all except furnishing the designs, and some of them may even do that.
Q. What is the cost of your designs of this lot of goods?
A. That is very hard to estimate.
Q. Can you give us the price of your designs?
A. I must look at the books for that. I have them here in my pocket.
Q. What would you make that set for (referring to sample of invoice under reappraisement)?
A. I don't know. I have not been over there in 14 years. You can get the facts better from my buyer, who is here.

115 By the merchant appraiser:

Q. He has to have a warehouse in St., Gall., but he calls it an office; he has people there to cut up goods, examine goods, and put wrappers and tickets on them?
A. Yes, sir.

Q. The first thing the superintendent does is to buy the cloth from Manchester—Jones Brothers—and send it to St. Gall. for sale?

A. I don't know.

Q. Then you make your designs, fetch your cloth to the man who owns the machines, and make a contract with him to do the stitching at a certain rate per 100 stitches; he does that, and then sends the goods to your warehouse, where the people examine them and say whether the quantity and quality is correct?

A. Yes.

Q. Then you send these goods to the bleacher and he charges so much per coupe?

A. Yes, sir.

Q. Then he returns them to your warehouse, the clerk re-examines them and finds out if any of them are damaged; then, if they are all right, they are cut up in pieces of 2, 3, 4, 5, or 6 stripes, according to the widths; they are there carefully folded, tied up, ticketed, charged, and shipped; that is the process in brief?

A. Yes.

By the general appraiser:

Q. The only charges that enter into it are the money you pay out for cloth in the grey, stitching, and bleaching, as the cost price of the goods; what other manipulation have you added?

A. Bleaching, boxing, ticketing, cutting, and folding.

(To the merchant appraiser:) You know that all of those
116 proceedings that have been enumerated you have done yourself through commission-houses in St. Gall. for 3 per cent.

The MERCHANT APPRAISER: I don't know anything of the kind. I will tell you what I did say: I said I bought my goods net, finished, and paid 3 per cent. commission.

A. The regular commission in St. Gall. is 3 per cent.

The general appraiser:

Q. Does it cost you 3 per cent. or over to establish your warehouse or manufactory at St. Gall. and to employ help and clerical hire there? What is that?

A. I don't know; that depends. It is regulated by the extent of the business. We do a business there of over a million francs a year.

Q. Does 3 per cent. pay all your expenses?

A. I think it does.

Q. It covers all the expense you incur for your warehouse and clerical force, together with all the working force?

A. I think it must. We did not establish the office there only to supply us with goods. They act as commission merchants for different houses in London, Paris, and St. Petersburgh and do their business for 3 per cent.

Q. Do I understand that your house is doing a commission business for other places?

A. Yes, sir.

Q. Are you selling these identical goods at St. Gall. to English, German, or other houses at the price you invoiced them at?

A. Yes, sir.

117 Q. Name the houses.

A. I can name one: H. Muser, St. Petersburgh

Q. Who is H. Muser?

A. My brother.

Q. Is there anybody besides your brother you sell these goods to at that price?

A. I don't know. I know for a fact that it is done. There are other houses, but I can't give you the names. All we do here is to send over orders and sell the goods that we get. Generally the business is done in Bruxelles.

Q. Have you put upon these goods as merchandise anything whatever by way of profits?

A. No, sir.

Q. Is this all your own capital employed in this business?

A. Certainly.

Q. Throughout the whole business?

A. Except, I suppose, when they run short they use their credits with bankers.

Q. Have you added anything for interest on capital invested?

A. No, sir.

By Mr. CURIE:

Q. Mr. Muser, what is the usage of the embroidery trade generally respecting the purchase or procurement of goods on the other side—are they or are they not represented by their own agents?

A. Every buyer of embroidery must have an agent. Those who have not their own office to attend to the finishing have it done through commission offices.

Q. Does the same rule prevail at other places as at St. Gall.?

A. Yes, sir.

118 Mr. CURIE to the general appraiser: Have you any objection to introducing the testimony of these gentlemen here to the effect that it is a usage at St. Gall., where these goods are purchased, to buy them and procure them in the manner in which Mr. Muser stated he has procured them?

The GENERAL APPRAISER: It is admitted that Messrs. Einstein & Hirsch, Messrs. Loeb & Schoenfeld, Messrs. Guggenheim Sons, and Messrs. Rappard & Co. do business in the same way. The general appraiser, in appraising these goods, will find out what reputable merchants pay in the open market for these or for similar goods, and he will appraise all goods in a similar way.

Mr. CURIE: We insist that our goods are either dutiable under the provisions of section 2906, R. S., as amended by section 7, act of March 3, 1883, if the market value of the goods can be ascertained by actual purchase and sale of the article abroad or a similar article, and if not, then their dutiable value will be ascertained under section 9 of said act, without any additions for com-

missions or for profits or incidental charges whatever in the putting up and packing, as stated in section 9.

The GENERAL APPRAISER: The general and merchant appraisers say they will give the suggestions of Mr. Curie their due consideration and will endeavor to appraise them pursuant to the statutes
119 made and in that case provided.

Mr. MUSER: I am willing that 3 per cent. shall be allowed to cover warehousing and incidental expenses not covered by the invoice instead of 10 per cent.

Adjourned.

H. GOWER HARE,
Official Stenographer.

120 In the Matter of the Reappraisement of Cotton Embroideries Imported by Muser Bros.

Before Hon. Geo. V. Brower, U. S. general appraiser; John Gibb, Esq., E. E. Eames, Esq., merchant appraiser-.

NEW YORK, *October 7th*, 1887

#12156. Three cases cotton embroidery, per S. S. "La Champagne," entered Sept. 19th, 1887; entry #135,502. Mr. Eames, merchant appraiser.

#2878. Two cases cotton embroidery, per S. S. "La Normandie," entered Sept. 7th, 1887; entry #131,315. Mr. Eames, merchant appraiser.

#16661. Two cases cotton embroidery, per S. S. "La Champagne," entered July 2, 1887; entry #108,471. Mr. Gibb, merchant appraiser.

Mr. Charles Curie appears as agent for the importers.

It is consented on the part of the importers that the testimony taken at a previous reappraisement, held May 25th, 1887, at which Mr. John Gibb acted as merchant appraiser and Messrs. Muser Bros. were the importers, shall be considered as part of the evidence in this case.

Mr. J. KOENIG sworn, examined by the general appraiser:

Q. What is your business?

A. I am engaged in cotton embroideries.

Q. Are you familiar with the manufacture of cotton embroideries, with all the details of preparation?

A. I am, sir.

121 Q. How long have you been engaged in that business?

A. Thirteen years.

Q. In St. Gall.?

A. Everywhere, sir.

Q. And you are familiar with the course of the preparation of the goods for market?

A. Yes.

Q. Please explain to us the details—how the business is done in St Gall. The goods are purchased in the grey, are they not?

A. I don't know exactly how it was in this special case, but as a rule they are

Mr. MUSER: I desire to state to the witness that the goods were contracted for with the manufacturer at stitch rates, and were then delivered to my office in St. Gall. I furnish the patterns in most cases.

Q. The goods are purchased by you in the grey?

A. Yes, sir; delivered by, the manufacturer in the grey; he has nothing to do with the bleaching. I would like to ask Mr. Koenig one question.

Q. Are you familiar with the commissions usually paid in St. Gall. for doing the business for American importers that my office in St Gall. does for me?

Mr. KOENIG:

A. I am; yes.

Q. Will you state what it is usually?

A. It is generally claimed to be done about on a commission of three per cent. They claim to do it.

Q. If I want to change my business and to abolish my office and give my business to a commissionaire, with facilities on my
122 part to see that no more than the actual stitch rates paid are charged to me, what commission do you think a commissionaire in St. Gall. would be willing to accept on that contract?

A. He would do it for a commission of 3 per cent. and the usual cash discounts.

Q. You think he could?

A. I do.

Q. How much is that?

A. Two to three per cent.

Q. If I want to be in such a position as to make an arrangement with a commission-house in St. Gall. that I will be at liberty to satisfy myself at any time that any drawbacks he receives are returned to me, and that they will do the business on a naked commission, what rate do you think a good commissionaire in St. Gall. would accept it at—on a business of not less than two million francs a year?

A. In this particular case, if you would furnish the commissionaire the money—the capital—to do the trade with, and pay him the fair market wages, as would be paid by a firm of high standing over there, I should think he would do it for 3 per cent. and some additional cash discounts. The rule is 3 per cent. That is what they claim, but they all get the drawback.

The general appraiser:

Q. What does that amount to?

A. It depends upon the house. They have a man to watch

things there, for which they pay extra; but they can do it for 3 per cent.

Q. If this business was done without the employment of a man's capital and without furnishing the designs, what, in your judgment, would be the whole amount of that net rate for delivery—how much more than the cost of the goods? Would 10 per cent. cover it?

123

A. It depends upon what returns the house makes and the way they do. It is very flexible, and it is a very arbitrary system of fixing up the market value at the gross price of the goods.

Q. Where the commissionaire employs his own capital and where he does all the work and furnishes all the designs, in your judgment does 10 per cent. cover the whole expense over and above the cost of the goods in the grey and the stitching?

A. Oh, yes.

Q. Do they furnish to the market for less than that 10 per cent?

A. There are houses who can do it, and others who do it in the ordinary run of business. I think I will have to calculate it.

Q. Have you stated that 10 per cent. did not cover it?

A. In a good many instances it does not cover it. It is very difficult to fix a standard.

Q. The use of the commissionaire's capital in business is worth something over there, isn't it?

A. Certainly.

Q. It goes to add to the intrinsic value of the goods?

A. Certainly.

Q. In your judgment, would ten (10) per cent. be too small an exaction where the capital and everything is used and placed in the business?

A. There are houses who can do it for less, and others for more. As I once previously stated, one house is called before the tax commission in St. Gall. They tax them upon a certain amount; then they claim that they have a loss which amounts nearly to 10 per cent. on what they do in the business. If they offer to show the books, I think it is quite proof that those houses have heavy expenses; but in this particular case, where I used to be with Mr. Muser, I have to state that by the way they employ the men they arrange it so that the expenses in St. Gall. are covered beforehand. The manager gets an interest in the money—what he makes over the expenses; therefore it is quite contrary to the other illustration just made, where houses claim that they have so much loss in order to evade the taxes over there.

124

Q. What do you mean when you say that Muser Bros. pay a premium to certain men?

A. I mean to say that Muser Bros. charge their proper expenses—that is, what they have laid out for getting the goods in, for getting them ready, and charging an additional commission, and this commission covers more than the expenses they have in St. Gall.

By Mr. MUSER:

Q. You were the buyer for the London branch. You went to St. Gall. and bought goods. How much commission did we charge the London branch?

A. Five per cent., if I am not mistaken.

By the general appraiser:

Q. And they charge that 5 per cent. to their branch house in London to themselves?

A. Yes.

Q. When they employ their own capital between themselves?

125 A. Yes.

Mr. MUSER: The London business is charged on all the capital we used. The London house had nothing to do with the expenses on the other side. It is true that no interest is charged to the house at London, and no interest is charged to myself on the employment of capital.

By Mr. GIBB:

Q. Are there houses in St. Gall. known as embroidery manufactories?

A. Yes.

Q. First-class houses?

A. Yes.

Q. Such a house as Ecklé Freres?

A. Yes.

Q. They are manufacturers from the word start?

A. They are the first manufacturers in St. Gall.

Q. There is no house of higher standing there, possessing the same or better facilities for manufacturing?

A. No, sir.

Q. Now, Ecklé Freres manufacture embroidery in a *bona fide* way. The first step they take in the manufacture, I understand, to be this: they hire or buy a warehouse or building.

By the general appraiser:

Q. Muser Bros. have a house there?

A. They rent one.

By Mr. GIBB:

Q. They engage a warehouse; that costs considerable money, does it not?

A. Sixty thousand dollars.

Q. Then the next thing to do is to engage a staff of designers?

A. Yes.

126 Q. They get large salaries, as a rule?

A. The highest.

Q. In addition to that, they have a staff of book-keepers, clerks, and other people to attend to business?

A. Yes.

Q. Then they begin by having a high-priced warehouse, a good staff of efficient employees; then they get the designs together, making them or buying them, which costs Mr. Muser 3 per cent.?

Mr. MUSER: I did not say it cost that.

Mr. KOENIG, resuming, examined by Mr. GIBBS:

Q. Then they go to work and buy their lot of cloth in the gray from Manchester houses or others?
A. Yes.
Q. Then they give out a notice that they have a lot of goods to embroider?
A. Yes.
Q. Then the men who own the machines in the country come around and bid on the stitching?
A. Yes.
Q. A bargain is struck as to price, and the stitcher gets the design and cloth and brings it back stitched?
A. Yes.
Q. The people in the house check the goods, see that it is done according to contract, and then the man is paid?
A. Yes.
Q. And when paid he loses a few per cent. for cash discount?
A. Two to 3 per cent.
Q. Then the goods are taken in charge by the bleacher, from the people in the house, or sent to him; he bleaches them and charges so much per piece?
A. Yes.
127 Q. When that is done they are brought back to the house and examined and checked off and prepared for shipment, invoiced and boxed, and all that sort of thing?
A. Yes.
Q. That is about the course of the manufacture?
A. Yes.

Mr. MUSER examined by Mr. GIBB:

Q. That is the process as described in your last case?
A. Yes.

Mr. KOENIG examined by Mr. MUSER:

Q. You made a statement as to taxes being levied in St. Gall., and that the answer had been made by different manufacturers that they not only did not make any money in St. Gall., but their expenses were more than they invoiced their goods at, and consequently they incurred a loss; you made that statement?
A. At the end of the year they had a deficit.
Q. Was our office included amongst those who made such statements?
A. No, sir.

By the general appraiser:

Q. In your judgment, Mr. Koenig, is Ecklé Freres a representative house?

A. Oh, yes.

Q. There are a number of such houses, are there not?

A. Yes; but Ecklé Freres' house, takes the first place.

Q. Looking at the process from its inception to its conclusion, do you think 10 per cent. over and above the cost of these goods anything more than a fair profit to be made on this, drawbacks and cash discounts included—would that percentage be more than a fair manufacturers' profit?

A. No; that would not be any more.

128 By Mr. MUSER:

Q. Mr. Koenig, you say that 10 per cent. would not cover the expenses of an office in St. Gall. such as ours.

A. I did not make that statement.

Q. What percentage, after allowing 3 per cent. for designs and incidental expenses, do you think would cover all our expenses in St. Gall.; I mean the expenses of our manager, rent, office or storehouse—in fact, anything that enters into the carrying on of that office and shipping our goods—including everything?

A. That is very hard to answer.

Q. Do you think 3 per cent. would cover the expenses for designs on the business we do in St. Gall.?

A. Yes, sir.

Q. You think that would cover it fully?

A. I do think so.

Q. After that is paid, there would remain nothing but the superintendence, manager's salary, store rent, and all other expenses of the office; how much would that be or, in other words, how much would you do it for?

The GENERAL APPRAISER: Mr. Koenig, you think 3 per cent. would fully cover the designing?

A. Yes; 3 per cent. would cover the designing.

Q. How much will it cost, now, for all the other labor connected with the preparation of these goods ready for the market, including office and store rent and clerical hire?

A. I should say another 3 per cent.

Q. How much, in your judgment, would the interest on the investment and the risk run in the transaction of this business

129 come to?

A. That I cannot answer.

Q. The interest on capital while lying there is worth something?

A. Sure.

Q. Is there not a risk of loss in all manufacturing business?

A. Certainly.

Q. You have not included that, have you?

A. I have not.

Q. Do you not think that where a manufacturer assumes all the risk 5 per cent. is a very small amount?

A. Very small. I know of houses that have to pay 8 per cent. to carry on business.

By Mr. MUSER:

Q. How much capital would you need, if you paid on the day of shipment, to do that business in St. Gall.?

A. I should think that our house, who furnishes the funds, would have *have* to calculate about half the amount on the return for the capital that is invested; a million francs if you are making two million- return.

Q. Please explain how you get at that. You pay for the goods when they are delivered to you in the gray, and you get your money when they are bleached?

A. It takes two or three weeks.

Q. That, then, is all the time the capital is losing interest?

A. Yes; but, speaking of the capital it takes, we have to reckon how much we will have ready to pay.

Q. You say it takes three weeks to finish the goods?

A. Yes.

130 Q. Then you admit that all the money I have paid to the manufacturer when he turns the goods over to me is only the charge of that office for three weeks?

A. I don't know.

Mr. MUSER examined by the general appraiser:

Q. What would you say the use of your capital is worth?

A. I would work that place with 150,000 francs.

Q. What would be the interest?

A. Four per cent.

Q. Any risk?

A. No.

Q. None whatever?

A. No, sir; it is the manufacturer's interest to turn out good goods.

By Mr. GIBB:

Q. You state that the house in St. Gall. is entirely separate and distinct from the house in New York, and that when they ship from St. Gall. the house in New York pays you the money?

A. Our Bruxelles house has charge of all the finances. When the American goods are shipped to any of the offices, that particular branch is charged and pays interest from the shipment.

Q. The two houses are entirely separate, and yet the house in St. Gall. invoices the goods to the New York house at the cost of the cloth, stitching, and bleaching; that is what you claim, and that is about 3% added on. The New York house buys goods from St. Gall. at exactly what they cost?

A. No, I did not say that. We have made in some years 69,000 francs profit.

Q. How much cheaper would you sell your goods than invoiced to you?

A. I would sell to any one at the same price, with a com-
131 mission of 5 per cent. added.

By the general appraiser:

Q. Would that include all the costs or charges which go to make up the 10 per cent. we have just heard about?

A. I do not include the 10 per cent. in that. I mean the invoice value added to that commission of 5 per cent. It should be 3 per cent. for expenses and 3 per cent for commission.

Q. I do not believe that that business can be done there safely under 10 per cent., which seems to be a modest sum. A man cannot employ capital without some risk. I see you would charge foreign houses 5 per cent. additional, and yet it costs you 3 per cent. for getting up your patterns; now, that makes 8 per cent on your part.

A. I have not said that. I will say that we charge to my brother in St. Petersburg only 3 per cent. I would undertake to do business for any other house charging 3 per cent. for expenses and 3 per cent. for commission, and what I said before is that we charge the other branches 5 per cent., and that includes 3 per cent. for designs.

Q. I cannot see how a man can do business so close as that and be safe. Do you mean to say that you would undertake to furnish the goods for 3 per cent., in addition to 3 per cent. for designs?

A. I would do it.

Q. No man in this country can do a legitimate business on 3 per cent.

A. You think so, but have you any actual knowledge?

Q. Yes, sir; I have practical knowledge and I know of
132 some cases where they are running their looms for nothing to keep their men employed.

A. I merely want to do a commission business, and will do it for 3 per cent. I have spoken to a very large importer in this country and have made him the same proposition. It would pay me well if I did it. We can just as well double the business. I do not manufacture. My office acts as a commission-house and nothing else, and if I am compelled to add this 10 per cent. I shall simply turn around and abolish my business.

Mr. GIBB: One of the largest manufacturers of St. Gall. is coming here to do business for 10 per cent.

Mr. MUSER: That is not any evidence, and I protest against anything of the kind being introduced. All I do is exactly what other parties do.

The GENERAL APPRAISER: When you show us other parties who are getting their merchandise into this country any cheaper than you, it will be seen to that they are advanced.

Mr. MUSER: The appraiser only raised the question whether I shall add 3 per cent. That I have added; but I have demanded

this reappraisement as a protest against this 10 per cent. under the regulations of the Treasury Department. I have proved that
133 I can do my business in St. Gall. for 5 per cent. commission. Why should I be compelled to add 10 per cent. when I can get it done for 5?

Mr. CURIE: The market value of the goods is the value in the grey, and with the expenses for bleaching, shipping, etc., added, that would constitute the dutiable value; but to put on that value the commission or incidental expenses in purchasing the goods would be contrary to section 7. The prices from the manufacturer who turns out the embroidery may be cash prices. If the goods are purchased at a certain price in the grey and paid for right there, that ends its; that, in brief, is what I submit. That makes the market value of those goods, so that there is no necessity for inquiring into the capital as entering into the value of the goods.

The GENERAL APPRAISER: I am narrowed down by the statute and must follow the law exactly.

Adjourned.

H. GOWER HARE,
Official Stenographer.

134 Plaintiffs' counsel then called as a witness EDWARD E. EAMES, who, having been duly sworn, testified as follows:

I am a merchant in this city, and acted as merchant appraiser on certain importations of embroideries by Muser Brothers. In the invoices, Exhibits 6–*i*, 3–*i*, and 2–*i*, I acted in respect to those goods and find my reports here. I attended upon reappraisement in conjunction with the general appraiser for the time being and made certain reports as to each of these invoices and added six per cent.

Q. To cover what? For what purpose and on what grounds did you make that addition of six per cent.?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

—. In two of these cases Mr. Brower was general appraiser and in the other Mr. Downes.

Q. If either of them at the time of signing the report stated to you the grounds upon which they added the ten per cent., please state them.

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

—. I presume that witnesses were examined before me and testimony taken.

135 Plaintiffs' counsel then called as a witness HENRY E. HOESLI, who, having been duly sworn, testified as follows:

I am employed by Muser Brothers as buyer for their embroidery department and as manager of it; have been with that house since 1874. I was born in St. Gall., and was employed by Muser Brothers

some time before coming to this country; have visited St. Gall. once a year since 1881. I receive a salary and an amount equal to a certain percentage of the net profits of their embroidery business, and therefore I have an interest. I ascertained the expenses of the department of the office as it has been kept by Muser Brothers in St. Gall. for the year 1887, and can state substantially what the percentage of the cost of that department in St. Gall. was to the business done in the year 1887.

Q. Will you please state it?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Can you state the total expenditures of the office of Muser Brothers in St. Gall. for the year 1887?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. In respect to the goods, the embroideries exported to this country by the house of Muser Brothers from St. Gall., what did the men in the employ of Muser Brothers do with respect to the
136 obtaining and preparation of those goods for exportation?

A. Do you want me to tell all that is done in that office?

Q. All with respect to the goods that are exported to this country.

A. First, the designs are made; these designs are enlarged and stitches put in—in other words, patterns are made from them; then the cloth is bought and it is given to the manufacturer, together with those patterns; and the contract is made at a specified rate for the stitching—for the work. When those goods come back they are examined to see if they are properly stitches, and then they are given to the finisher.

Q. In the same building?

A. No; he comes and takes the goods away; he sees to their being bleached, starched, laundried, singed, folded loosely, and returned to us; then they are looked over to see if the finishing was done properly; then they are cut in strips, folded, ticketed, packed, invoiced, and shipped.

Q. And that is all that is done by the office of Muser Brothers or by those who are directly employed by them?

A. Yes; that is all that is done.

Q. Do you know what the salary of the designer was in 1887?

A. Yes.

Q. What was it?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Do you know the total amount of embroideries obtained by the office in St. Gall. of Muser Brothers in the year
137 1887?

A. Yes.

Q. What was it?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Have you a specimen of the patterns?
A. That is a pattern as it is given in work (producing pattern).
Q. This is a sample of the embroidery made from this pattern?
A. Yes.
Q. And this is the pattern which was given to the stitcher?
A. Yes.
Q. This pattern shows every stitch?
A. Every one.
Q. And enlarged a number of times, so that the machine can reduce it to a proper size?
A. Yes.

(The pattern referred to is offered in evidence and marked Exhibit 8.)

Q. Do you know at what rate in 1887 you could procure in St. Gall., or could ordinarily be procured to be done by other houses there, the same work that you have testified was done in the house of Muser Brothers?
A. Yes.
Q. Will you state what that was?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Plaintiffs' counsel then called as a witness FREDERICK W. BROOKS, who, having been duly sworn, testified as follows:

I am a liquidator in the custom-house. I have made
138 examination and calculations on invoices and entries herein as to the amounts paid. The amounts now given by me represent the duty paid by the plaintiffs upon the amounts added by the appraisers to the entered value. As to Exhibit 1, the principal is $53.60, and the interest $6.53; Exhibit 2, the principal is $76.80, and the interest $9.31; Exhibit 3, the principal is $34.80, and the interest $4.23; Exhibit 4, the principal is $72.80, and the interest $8.88; Exhibit 5, the principal is $10.40, and the interest $1.21; Exhibit 6, the principal is $10, and the interest thereon $1.21, making a total for the principal of $258.40, and a total for the interest of $31.37, and a grand total is $289.77; there was an addition of three per cent. to the invoice value made by the importer upon the entry. The invoice value is the value contained in the invoice, and the entered value is the invoice value plus the addition of three per cent.

The amount of duty paid by the plaintiffs upon their addition on their entry to the invoice value of the merchandise in each of the exhibits is as follows: Upon Exhibit 1, the principal is $32, and the interest thereon $2.66; Exhibit 2, the principal is $33.20, and the interest thereon $3.99; upon Exhibit 3, the principal is $15.20, and the interest thereon $1.82; upon Exhibit 4, the principal is $31.20, and the interest thereon $3.75; upon Ex-

hibit 5, the principal is $4.40, and the interest thereon 50 cents; upon Exhibit 6, the principal is $4.40, and the interest thereon 50 cents.

139 GEORGE V. BROWER, being called as a witness for plaintiffs and having been first duly sworn, was asked the following questions:

Q. In making your report upon these several invoices and in adding ten per cent. to the invoice value did you or not take into consideration as a part of that ten per cent. addition any manuturer's profit?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Did you in making that addition ascertain the cost of the cloth, of the stitching, the bleaching, and finishing, and then add to that sum as a part of the ten per cent. anything for charges incurred in the purchase and preparation of said goods for shipment?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Upon what ground and to cover what did you add the ten per cent. or the sum that you did add to the invoice?

Defendant's counsel objected to the question on the ground that the action of the reappraising board was final and cannot be reviewed in this action. The court sustained the objection, and plaintiffs' counsel duly excepted.

The plaintiffs then rested. The defendant offered no evidence.

Counsel for defendant then moved the court to direct a
140 verdict for the defendant upon the ground that the plaintiffs had not proved facts sufficient to constitute a cause of action.

Counsel for plaintiffs moved that the plaintiffs be allowed to go to the jury upon the issues that were made.

The court thereupon refused to submit the issues to the jury and directed the jury to find a verdict for the defendant.

The plaintiffs' counsel duly excepted to the direction and also duly excepted to the denial of the motion to submit the case to the jury.

The jury thereupon rendered a verdict for defendant.

And inasmuch as none of the said matters appear upon the records of said trial, therefore, on the prayer of the several parties, by their counsel, the said judge has signed this bill of exceptions *nunc pro tunc* as of the 11th day of December, 1889, and ordered the same to be filed.

E. HENRY LACOMBE.

Consented to.

CHAS. CURIE,
Att'y for Pl'ffs in Error.

Endorsed: N. S. 12564. U. S. circuit court, southern district of New York. Frederick W. Muser *et al. vs.* Daniel Magone. Plaintiffs' bill of exceptions. Charles Curie, attorney for plaintiffs, 44 Exchange place; N. Y. U. S. circuit court. Filed June 21, 1890. John A. Shields, clerk.

141 Supreme Court of the United States.

FREDERICK W. MUSER, RICHARD MUSER, and CURT MUSER, Plaintiffs in Error,
vs.
DANIEL MAGONE, Defendant in Error.
} Assignment of Errors.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said court, at the Capitol, in Washington, come the said plaintiffs in error, by Charles Curie, their attorney, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said defendant in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs against the said defendant.

And the said plaintiffs pray that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that (they) the said plaintiffs may be restored to all things which (they) (have) lost by occasion of said judgment, &c.

CHARLES CURIE,
Att'y for Plaintiffs in Error.

142 [Endorsed:] 12564. United States Supreme Court. Frederick W. Muser *et al.*, plaintiffs in error, *vs.* Daniel Magone, defendant in error. Assignment of error. Charles Curie, attorney for plaintiffs in error. Due service of a copy of the within assignment of error is hereby admitted this second day of July, 1890. Edward Mitchell, U. S. att'y, attorney for def't in error. To Edward Mitchell, attorney for def't in error. U. S. circuit court. Filed July 2, 1890. John A. Shields, cl'k.

143 Supreme Court of the United States.

FREDERICK W. MUSER & RICHARD MUSER & CURT MUSER, Plaintiffs in Error,
vs.
DANIEL MAGONE, Defendant in Error.
} Joinder in Error.

And afterwards, to wit, on the second Monday of October, in said term, the said defendant in error, by Edward Mitchell, U. S. att'y, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justice

thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

EDWARD MITCHELL,
U. S. Att'y, Attorney for Defendant in Error.

144 [Endorsed:] 12564. United States Supreme Court. Fred'k W. Muser *et al.*, plaintiffs in error, *vs.* Daniel Mogone, defendant in error. Joinder in error. Edward Mitchell, U. S. att'y, attorney for defendant in error. Due service of a copy of the within joinder in error is hereby admitted this 3 day of July, 1890. Charles Curie, attorney for plaintiffs in error. To Charles Curie, Esq., attorney for plaintiffs in error. U. S. circuit court. Filed July 3, 1890. John A. Shields, clerk.

145 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

FREDERICK W. MUSER, RICHARD MUSER, and CURT MUSER, Plaintiffs in Error,
vs.
DANIEL MAGONE, Defendant in Error.
} Bond for Costs. 12564.

Know all men by these presents that we, Richard Muser and Charles Bleidorn, are held and firmly bound unto the above-named Daniel Mogone in the sum of two hundred and fifty dollars, to be paid to the said Daniel Mogone; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 27th day of June, in the year of our Lord one thousand eight hundred and ninety.

Whereas the above-named plaintiffs in error have prosecuted their writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named plaintiffs in error shall prosecute their said writ of error to effect and answer all damages and costs if they fail to make their said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

R. MUSER, 465 *Broome, St.* [L. S.]
CHAS. BLEIDORN, [L. S.]
25 *William St.*

Sealed and delivered and taken and acknowledged this 27 day of June, 1890, before me—

WILLIAM H. NORTHUP,
[L. S.] *Notary Public, Kings Co.*

Certificate on file in New York county.
13—246

146 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Richard Muser and Charles Bleidorn, being duly sworn, depose and say each for himself that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

R. MUSEN, 465 *Broome St.* [L. S.]
CHAS. BLEIDORN, 25 *Wm. St.* [L. S.]

Sworn to this 27th day of June, A. D. 1890, before me—

WILLIAM H. NORTHUP,
[L. S.] *Notary Public, Kings Co.*

Certificate on file in New York county.

[Endorsed:] U. S. circuit court, southern district of New York. Frederick W. Muser *et al. vs.* Daniel Magone. Bond for cost on writ of error. Approved as to form, amount, and sufficiency of surety. N. Y., June 30, 1890. E. Henry Lacombe. U. S. circuit court. Filed July 1, 1890. John A. Shields, clerk.

147 UNITED STATES OF AMERICA, ss:

To Daniel Magone, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and ninety, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Frederick W. Muser, Richard Muser, and Curt Muser are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Dated June 30th, 1890.

E. HENRY LACOMBE.

148 [Endorsed:] E. & A. A. 921. 12564. U. S. Supreme Court. Frederick W. Muser *et al.*, plaintiffs in error, against Daniel Magone, defendant in error. Citation. Charles Curie, attorney for plaintiffs in error. Due service of a copy of the within citation is hereby admitted this 2d day of July, 1890. Edward Mitchell, U. S. att'y, attorney for defendant in error. P. 25, ch.

[File-mark:] U. S. circuit court. Filed Jul- 2, 1890. John A. Shields, clerk.

Endorsed on cover: Case No. 14261. S. New York C. C. U. S. No. 246. Frederick W. Muser, Richard Muser, and Curt Muser, plaintiffs in error, *vs.* Daniel Magone, collector of the port of New York. Filed October 13, 1890.

Supreme Court of the United States.

OCTOBER TERM, 1894.

FREDERICK W. MUSER *et al.*

vs.

DANIEL MAGONE, *Collector.*

No. 37.

PLAINTIFFS' BRIEF.

Statement.

This is a customs revenue case, not involving any question of classification, but attacking the *legality* of the valuation to which the proper rate of duty was applied.

In the summer and fall of 1887, the plaintiffs, Muser Brothers, imported into New York some cotton embroideries, of which they were held by the collector to be the manufacturers at St. Gall, Switzerland (Rec. 42.) The customs authorities held that the plaintiffs were manufacturers, upon the following statement, as by the testimony of Richard Muser, one of 'Muser Brothers';—

"I am one of the plaintiffs, and have been importer of laces and cotton embroideries for over twenty years. These goods were made in St. Gall, in Switzerland. I attended on their reappraisement here. We had witnesses to explain to the general appraiser and merchant appraiser the way our goods were procured.

The correctness of the invoices themselves was not questioned. I told the appraisers that we had an office in St. Gall to which we sent our orders, and they employed a designer who draws the patterns, and the patterns are sent over here for selection, or my buyer, when he goes to Europe, selects suitable patterns from those prepared for him. Then a contract is made with manufacturers and owners of machines to embroider those patterns for so much per one hundred stitches, including the thread or yarn used. When the goods are embroidered they are delivered to our office in the gray, and are then delivered by our office to a finisher whose business it is to bleach them, and after they are bleached they are returned to the office; they are then cut up into suitable lengths, ticketed, prepared for shipment, packed in cartons, the cartons packed in wooden boxes and shipped to this country and invoiced. This is what I told them there on the reappraisement. The expenses connected with all these different manipulations are all contained in the invoices, and they form the basis of the cost at which the goods are figured in our invoices, and sworn to before the consul at St. Gall as our cost. I told them all this. Then I produced several witnesses to substantiate my statement, and after the general appriser and the merchant appraiser discussed the matter and the general appraiser said that *we were manufacturers* and that it was necessary to *add the profit* that a manufacturer *would* make, in order to make market value, and he thought that *that ought to be ten per cent.* . . . (Rec. 42, fols. 56, 57.) . . The man who is employed there (I belive his name is Tillotson) to count the stitches was called down and asked whether he had examined the goods and counted the stitches and whether he had found them correct. He said he had examined them, and found them correct. The cost of the cloth he also adds in arriving at the price of the goods. He found the additions for bleaching and finishing correct. There was no question as to the valuation as given in our invoice.

The only question was whether an addition should be made for manufacturer's profit.

St. Gall is the principal market for embroideries in Switzerland; I have been there; we have had a house there for a number of years.

These goods were not standard goods. What I understand by standard goods are goods that are essen-

tially the same—of a given weight and texture. The cloth was a standard article. Our goods of the patterns imported in 1887 were not reported in any price current or in any papers; the cloth is, but not the embroidered goods. The rate of stitching is published almost every day in the papers, but not the finished article.

As far as I know, none of our goods were bought or sold in St. Gall or in Switzerland." (*Id.* 42, 43; fols. 57, 58.)

Upon cross-examination, the fact was elicited that in September, 1885, Mr. Muser attended a meeting of the importers of cotton-embroideries imported into New York, and was persuaded, over his protest, to sign, as one of a committee of five, a paper which was offered and received in evidence against plaintiff's objection, addressed to the customs officers then investigating the methods of appraising such embroideries, stating (1st) that a count of stitches was the only proper way of arriving at their correct valuation; (2nd) that it be recommended to the appraising officers to adopt such count, in appraising; valuing the stitches according to the consul's report, adding the cost of the cloth "and adding to this ten per cent. to be called 'manufacturers' profit'; then the cost of bleaching, finishing and putting up." (Rec. 46.)

As to this paper, Mr. Muser testified; "If I signed the statement that the ten per cent. was a necessary addition, I signed it under protest, and gave my reasons on the same day to Mr. Coombs;"—the General Appraiser to whom it was addressed. (Rec. 45.)

Muser Brothers "continued to protest" against the addition of this ten per cent., "manufacturers' profit", just the same after Mr. Richard Muser signed this paper, as they did before. (Rec. 49, 50.)

The original draft added the ten per cent to the cost "in the gray". It was so presented to the appraiser, who wished it added to the completed article; and this addendum was signed by Mr. Muser, under the same stress as the original.

"This committee, after conference with the appraiser and the commission, hereby agree on behalf of the meeting of importers, that the ten per cent. referred to in resolutions 2 and 4, as 'manufacturers' profit' shall be added to the cost of the goods in a finished condition, including the cost of the bleaching, finishing and putting up." (Rec. 47, fol. 65.)

In the course of the cross-examination, Mr. Muser had stated that Muser Brothers hired an office in St. Gall, and paid salaries to all persons employed therein. "Our buyer on the other side has general supervision over this business, and has his headquarters at the office". (Rec. 47, fol. 66.)

Q. "He is paid a salary by your house?" *(Ibid.)*

Plaintiff's counsel objected to this question, this salary not being a part of the cost of manufacturing the goods. The question was admitted and an exception allowed.

Ans. "All the men employed by us are paid salaries, of course". *(Ibid.)*

No stock was carried at St. Gall. "The moment the goods are put up and finished, they are shipped to this country." *(Ibid.)*

Mr. Muser added;—

"We buy this cloth outright and an interval intervenes before the cloth is stitched, bleached, finished, and ready for shipment. I do not know at what time it gets to St. Gall. I suppose that our office does not buy the cloth before they have orders for a certain quantity of goods, and then they buy cloth enough to fill that order, and then it is given out to be stitched, which, I suppose, may take from one month to six weeks. During that time our capital is invested in that business and a part of the whole investment in the business is the interest on this capital for that time, the same as the interest on any man's money invested in this business. The goods made in St. Gall., Switzerland, are shipped mostly all to us in this city.

Q. If you sold those goods to some other house you would have to include all these various items of ex-

pense in the expense of your goods before you could realize anything?

A. That is just the point I am contesting. I say that my house on the other side is a commission house for us. If I would hire another commissioner in St. Gall,—he would do exactly the business my house does for me and he would charge me three per centum or five per centum commission, and that commission is not dutiable; whereas, when I am compelled to add ten per cent. to my invoices, they make that ten per cent. double, and I pay four per cent. and fare four per cent. worse than my neighbors do.

Defendant's counsel moved to strike out the answer as irresponsive.

The court granted the motion, and plaintiffs' counsel duly excepted.

If we sold these goods to somebody else we would not put these expenses in as a part of the expense of manufacturing, but would charge them as a commission; we would add it in the nature of a commission, and not as a manufacturer's profit.

Q. Is it not a fact that at this meeting where these resolutions were adopted which I have just read to the jury (Defendant's Exhibit A) that every house doing any considerable business in this city in cotton embroideries was represented?

Plaintiffs' counsel objected to the question as immaterial. The court overruled the objection, and plaintiffs' counsel duly excepted.

THE COURT: I admit this upon the theory that, *it being a matter to be determined by the appraiser what the expense of manufacturing is*, the statements of those who are in the trade is competent evidence for the appraiser to consider in arriving at his conclusion, but I do not think that this evidence is of any very great weight". (Rec. 47, 48; fols. 66 to 68.)

The witness continued:

A. I do not know whether every house was there, but there were a great many there. I cannot name any important house doing business in embroideries that was not represented there. I did not take the trouble to look around because I took very little interest in it.

Q. Is it not the fact that these five houses, whose representatives signed these resolutions as a committee, which resolutions I have read in your hearing, viz., Mills & Gibbs, Goldenberg, Bros. & Co., Einstein,

Hirsh & Co., Albert, Haager & Waldburger, and Muser Bros. were five of the largest and most representative houses dealing in these goods?

Plaintiffs' counsel objected to the question as immaterial. The Court allowed the question, and plaintiffs' counsel duly excepted.

A. There are houses a good deal larger than those five. There were houses that did a great deal larger business than any of those who signed. For instance, the embroidery business is only a small part of my business. There were houses, like Loeb & Schoenfeld and Guggenheim Sons, who did as much business in one year as all those five houses in cotton embroideries. Goldenberg Bros. & Co. is comparatively a small house. Albert, Haager & Waldburger imported more than Goldenberg or than we did." (Rec. 48, 49, fols. 68, 69.)

Re-direct examination:

I have not personally made an account of the amount of the expenses of our St. Gall. house, because I could not. I have not had one made up for the last few years, but about three years ago our office in St. Gall made up an account showing what the profit of the office was after the addition of the ten per cent.

Q. State whether those expenses are or are not similar expenses to those that are made by a commission house which makes a charge for its services.

Question objected to by defendant's counsel as immaterial. The Court sustained the objection, and plaintiffs' counsel duly excepted.

Q. You have stated that you signed an agreement with some other importers of New York, which has been introduced in evidence. Did you understand that it was an agreement with the Government or that the Government was bound by it in any way?

Counsel for defendant objected to the question as immaterial and that the agreement, being in writing, explains itself. The Court sustained the objection, and plaintiffs' counsel duly excepted.

Q. Did you mean by signing this agreement to concede that it was right that you should pay duty upon ten per cent.?

Objected to; that the paper speaks for itself.

THE COURT: I think that it is covered by his statement on direct examination that immediately after signing the agreement he wrote a letter, stating that he

and the whole thing under pressure; that he continued to protest, and that he did not consider it right.

PLAINTIFFS' COUNSEL: That is what I desire to bring out." . . . . . (Rec. 19, fols. 69, 70.)

The witness thus explained the circumstances which led him to sign the Manhattan hotel paper;—

Q. At the time this paper was signed by you with the other importers what was the situation as to goods in the public stores here; what was the situation?

A. There was an accumulation of goods. I do not believe that some merchants received any goods for two or three months, and the time came when they had to deliver orders, and they were considerably worked up about it and did not know what to do, and were willing to accede to almost anything in order to make a *modus vivendi* with the Government to get their goods and to know how to enter their cases. As I have told you before, some of my cases had been advanced and I sent them to the merchant appraiser and my goods were passed as correct. Therefore I was not very vitally interested except that I was in sympathy with my brother importers, and that was the only reason that I signed the paper.

The embroidered goods were advanced all the way from ten to forty per cent. The Government had employed a special agent at that time. I believe that I have testified as to that.

Q. Was the 10% referred to in the resolution fixed for any particular time or was it the general average for the whole year?

Defendant's counsel objected to the question as indefinite and immaterial. The court sustained the objection, and plaintiff's counsel duly excepted.

Q. Were there, in 1887, commission houses in St. Gall which did the same thing for other importers or purchasers that is done by your house there for your house here?

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiff's counsel duly excepted.

Q. For what percentage of compensation would the same thing be done by your house in St. Gall in 1887 in relation to obtaining these goods there and shipment here? For what percentage could that have been obtained to be done by other houses there?

Defendant's counsel objected to the question as immaterial; that the witness cannot testify as to what other people can get their business done for; that the witness is not shown to be qualified to answer any such question, and that no foundation has been laid for it. The court sustained the objection, and plaintiff's counsel duly excepted.

Q. Did you yourself purchase goods through a commission house in St. Gall as well as obtain them through your own house?

Defendant's counsel objected to the question on the same grounds as last stated. The court sustained the objection, and plaintiff's counsel duly excepted. (Rec. 50, 51; fols. 72, 73.)

To show the Court and jury how the advance came to be made upon their goods, plaintiffs called HENRY W. COOMBS, who was U. S. general appraiser from July, 1883, to December, 1885, assigned to duty in New York, where he became familiar with "the embroidery controversy." Under instructions from the Secretary, Mr. Coombs investigated the methods of appraisement and re-appraisement of embroideries, endeavoring to ascertain some plan by which that controversy could be obviated. (Rec. 51 bottom.)

This witness was then asked;—

Q. "Will you state whether or not there was any market-value for cotton embroideries in Switzerland in 1885, or since that time"?

Objected to as *immaterial*. The Court sustained *the* objection, and plaintiff's counsel duly excepted. (Rec. 52 top.)

The same witness thus concluded his testimony;—

"I was present at the meeting held at the Manhattan Hotel, and stated; 'It is admitted, I believe by all that there exists to-day *no known market-value for this article* of merchandise' (referring to embroideries.)" (Rec. 52, fol. 74.)

MICHAEL F. MALOY, buyer of embroideries for Arnold, Constable & Co., from January, 1886, to time of testifying, and for the ten preceding years with Duden & Co.,

in the same capacity; accustomed, for seventeen years, to visit Switzerland on this business, and familiar with its course at St. Gall, testified that, in 1887, embroideries were not kept in stock at St. Gall, but were ordinarily obtained from submitted samples, and upon one's own suggestion. *Embroideries cannot be obtained in St. Gall by direct purchase*, but can be obtained from sample. There were houses there which did business upon commission.

The goods are made, according to the qualities ordered, upon the samples submitted by the manfacturers, and also by the commission men. . . I furnish the patterns, in some instances.

When I buy from commission men, they submit the samples to me, and after they take my orders they give them to the manufacturers to make. As a rule, the commission men buy the cloth and give it to the manufacturer to make". (Rec. 25, fol. 75.)

The witness was then asked;—

Q. "And the manufacturers do what?"

Before witness was allowed to answer, he was cross-examined as to competency, and stated;—

"I know from experience what the commission men do after I give them their orders. I have to see whether the thing is right or not, during the process. I am supposed to try and find out whether they are excessive or not in charges. We do not generally agree with them about the price when we give the orders. The prices are there, and then I submit it sometimes to settle the basis of *whether the quantity of stitches is there*, to warrant their price.

I have to control it in every way—the number of stitches, the mode of finishing, and the way of getting up the goods. I see that the price is right on the start, and then that the finish is correct. I see that my instructions are followed out all the way through. They do not do anything, unless by my instructions, even to the boxing, ticketing, and the general details throughout. I superintend the whole business. Of course, I do not remain there to do it. My instructions are there, and I see that a sample piece is brought out and done in this way I speak of. I do nothing further except looking after the commission." (Rec. 52, 53.)

Defendant's counsel objected that the witness is not qualified to answer the question asked. The Court sustained the objection, and plaintiffs' counsel duly excepted.

The same witness was then asked;—

Q. " Will you state what was the usual rate of commission in St. Gall in 1887 of these commission houses ? " *(Id.* 53.*)*

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

Q. " Please state whether or not goods like those of Mr. Muser's and such as were imported in 1887 had a market value in St. Gall." (Rec. 53, mid.)

Defendant's counsel objected to the question as calling for a conclusion of the witness. The Court sustained the objection, and plaintiffs' counsel duly excepted. *(Id.)*

To my knowledge the finished goods were not obtained to any considerable extent in St. Gall in any other way than from manufacturers and from commission houses, upon orders that were given. Embroideries in the finished condition were not reported in any account-current or newspaper or price list in 1887. The price of the stitching was reported. The finished were never reported. (Rec. 53, fol. 77).

Q. Were any goods of the patterns of Mr. Muser's goods for sale, or could they be obtained upon orders in St. Gall or in any other way, except from Mr Muser's house, in 1887 ?

Objected to by defendant's counsel on the ground that the witness, being a buyer for Arnold, Constable & Co., had no relation with and *could* know nothing of the business of Muser Brothers!! The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

Q. For what services were commission houses in St. Gall paid a commission? (Rec. 53, bottom.)

Defendant's counsel objected to the question as immaterial. The court sustained the objection on the ground that the witness is not shown to be competent to testify as to what commission houses in St. Gall actually did. Plaintiffs' counsel duly excepted. *(Ibid.)*

Q. When goods are obtained in the manner you have just stated what commission did you pay and what is the usual commission at St. Gall for such services? (Rec. 54, top.)

Defendant's counsel objected to the question as immaterial. The court sustained the objection on the ground that it had not yet been shown that what the commission merchants did in St. Gall was in fact the same thing that plaintiffs' house did and which is represented by the difference in dispute here. Ptaintiffs' counsel duly excepted. *(Ibid.)*

Q. Do you know of your own knowledge what the commission house in St. Gall actually did in 1887 for their commissions? *(Id.* fol. 78.*)*

Defendant's counsel objected to the question as immaterial, and that no foundation has been laid for asking that question of this witness. The court sustained the *latter* objection, and plaintifis' counsel duly excepted. *(Ibid.)*

The witness then said;—

In 1887, when I ordered embroideries from a commission house in St. Gall, the commission house added there per cent. to the cost of the completed goods. *(Ibid.)*

Q. What was that commission added for? *(Ibid.)*

Defendant's counsel objected to the question as immaterial, and also that the witness is not shown to be qualified to answer. The court sustained the objection, and plaintiffs' counsel duly excepted. (Rec. 54, middle.)

Q. Was or was not that commission a charge for procuring cloth, embroidering it, finishing it, and superintending ? *(Ibid.)*

Defendant's counsel objected to the question as immaterial and on the ground that witness has not been shown to be qualified to answer the question. The court sustained the objection, and plaintiffs' counsel duly excepted. *(Id.* fol. 79.*)*

The witness proceeded ;—

"In 1885 I was a partner in the house of Duden & Co., importers of embroideries. I did not have any notification of the meeting at the Manhattan hotel.

The cost of the completed goods was the cost of the cloth, of the stitching, of the bleaching, of the cutting up into strips, of the ticketing, and of the boxing, and to the cost of the completed goods three per centum was added for commission.

The commission men at St. Gall had samples and varieties of embroidered goods from which any one in the dry-goods business could make a selection and could obtain them for the cost which I have stated, plus the three per cent." (Rec. 54, fol. 79.)

Plaintiffs' counsel then called as a witness JACOB HIRSH, who, having been duly sworn, testified as follows :

"In 1887 I was an importer of embroideries and laces. I was appointed merchant appraiser on an importation by plaintiffs here and acted as such. (Witness shown Exhibit 5i.) That is the invoice. There was a difference of opinion between myself and the general appraiser. I recollect what took place upon that examination and hearing and can state the grounds upon which the general appraiser made the addition to the invoice that he did make. (Rec. 54, 55.)

Q. Will you state them ?

Objected to as immaterial, and that the proceedings of the appraisers are final and cannot be reviewed by this court. *(Id.* 55 top.*)*

THE COURT : I will exclude this question as calling

for more than a statement of facts. It calls for inferences and conclusions. *(Ibid.)*

Plaintiffs' counsel duly excepted. *(Ib.)*

THE WITNESS;—"The general appraiser in this case, Mr. Downes, and I were together at the time of the appraisal and examination. The two reports which are annexed to this invoice were signed by me and the general appraiser at the same time." *(Ibid.)*

Q. What, if anything, did he say to you on that occasion with respect to concurring in his report and as to the reasons for making the addition which he made to the invoiced value? (Rec. 55, fol. 80.)

Defendant's counsel objected to the question as immaterial and incompetent. The Court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

Q. At the time that the general appraiser, Mr. Downes, signed this report did he make any statement to you explanatory of his reasons for doing so? (Rec. 55, middle.)

Defendant's counsel objected to the question as immaterial. *(Ibid.)*

THE COURT: I sustain the objection unless you state that you wish to show some *fraud* with regard to the appraiser.

PLAINTIFFS' COUNSEL: I want to show a mistake, but not fraud. *(Ibid.)*

Q. Do you know, or not, whether upon the reappraisement the local appraiser or any of the examiners were present? (Rec. 55, fol. 81.)

Defendant's counsel objected to the question as immaterial.

THE COURT: Unless the statute requires the presence of the local appraiser or of the examiners I shall exclude the question.

Plaintiffs' counsel duly excepted. *(Ibid.)*

Q. As matter of fact, if you know, state whether any amount was added to the invoice valuation by yourself or by the general appraiser as manufacturer's profit. *(Ibid.)*

Defendant's counsel objected to the question as immaterial, and that the reappraisement speaks for itself as to what was done. The court sustained the *latter* objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

Plaintiffs' counsel then called as a witness HENRY SCHOONMAKER, who, having been duly sworn, testified as follows:

"My business is buying and selling cotton embroideries and laces. In 1878 I was examiner of laces and cotton embroideries in the United States appraiser's stores; held that position for six or seven years. I was present at the meeting held at the Manhattan hotel in 1885. The object of the meeting was for the merchants to protest against the action of the appraisers in the mode they had adopted for appraising goods for the past few months. *The principal action they protested against was the appraising of goods by sight or virtually guessing at the value of the goods and adding a certain amount on at the suggestion of the special agents* and other parties The course pursued by the appraisers up to a month or two prior to this meeting was similar to the one since pursued, I believe". (Rec. 55, 56.)

Q. While you were examiner were the lace and embroidery invoices passed upon the stitch value and the cost of cloth and of finishing, with the addition of ten per cent.? (Rec. 56, fol. 82.)

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiff's counsel duly excepted. *(Ibid.)*

Plaintiffs' counsel then read in evidence certain papers from the files of the custom house relating to the reappraisements in which Mr. Hirsh acted as mer-

chant-appraiser (Rec. pp. 57 to 61) which indicated the addition of ten per centum as "manufacturer's profit" to have been made "upon compulsion". (Rec. 58, bottom; 59, bottom; 60, bottom.)

Mr. Hirsh's examination was then resumed, and, being further examined as a witness for plaintiffs, he testified:

These papers which have just been offered in evidence were before the general appraiser and myself before we signed the report on this reappraisal.

Q. What examination did you make of the goods covered by these invoices? (Rec. 61, fol. 88.)

Defendant's counsel objected to the evidence as immaterial, and that no claim is made in the protest that the goods were not properly examined. The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

Q. Did the appraising board send for any of the assistant appraisers, or for the assistant appraiser who had passed this invoice in the local appraiser's office? *(Ibid.)*

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

WITNESS;—"I knew the assistant appraiser, Mr. Kent; he is now dead." *(Ibid.)*

Q. Did he come before the appraiser's board and make any statement as to the grounds upon which the local appraiser had advanced the invoice? *(Ibid.)*

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

Q. Was any other testimony considered by the board of appraisement than what is contained in this record (Exhibit 5 B.) *(Ibid.)*

Defendant's counsel objected to the question as im-

material. The court sustained the objection, and plaintiffs' counsel duly excepted. (Rec. 62 top.)

Q. Please examine Exhibit 5 B and state, if you can, whether it contains a complete record of the proceedings upon the reappraisement of these goods? *(Ibid.)*

Objected to by defendant's counsel as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

Q. Why did you decline to join with the general appraiser in his report? (Rec. 62, fol. 89.)

Objected to by defendant's counsel as immaterial.

THE COURT: I will exclude the question.

Plaintiffs' counsel duly excepted. *(Ibid.)*

Q. What was the basis of your judgment on which you signed the report, saying, "Entry sustained", that entry having added three per centum to the invoice? *(Ibid.)*

Objected to by defendant's counsel as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

THE WITNESS; David Shoenfeld was called as a witness before the board:--*(Ibid.)*

Q. Did he testify upon that examination that "the above prices, thirty-five centimes for 4/4 and twenty-eight centimes for 6/4, are correct for stitching, and the price for the cloth must be added to make the cost. We add to our cost ten per cent. for manufacturer's profit. This we only do under compulsion."—Was any statement made following that testimony, by the general appraiser, to the effect that that was the rule and must be followed? (Rec. 62, fols. 89, 90.)

Objected to by defendant's counsel as immaterial. The court sustained the objection, and plaintiff's counsel duly excepted. *(Id.* fol. 90.*)*

Plaintiffs' counsel then called as a witness JAMES C. MCCARTHY, who, having been duly sworn, testified as follows:

I reside in Boston; am connected with the house of Jordan, Marsh & Co.; have been with them for seventeen years. For eleven years I have been a buyer of laces and embroideries. During that time I have visited St. Gall one or twice a year. Machine embroideries are produced in St. Gall. I obtain them by buying them from the designs furnished by the manufacturers or commissionaires. Samples are submitted to me—some designs on paper and some that are already manufactured—and from these I select what I need for my trade, which is generally over a medium to a finer grade than is generally used, and then they are manufactured to my order. I pay the stitch rate for them, and to the manufacturer or commissionaire, if I use them, I pay three per centum for the goods when already embroidered, bleached, finished, and packed, and I pay for the packing, the casing, and the tickets extra. I pay the cost of the cloth in the gray, and the stitch rate, whatever it may be at the time, and for the bleaching and finishing, and to that three per centum is added. I consider that that is the actual cost of the goods in the gray, and from that all expenses in addition to that is for the bleaching and packing.

Being cross-examined by defendant's counsel:

All that I pay for besides the cost of stitching, bleaching, and finishing and the three per centum is for the casing, and the packing is generally charged in connection with that, and for the tickets on our goods. The designs are submitted to me, and I select from those designs what I think suits me; do not have to pay extra for that; the only difference in connection with that is for extra-fine goods that I have made or manufactured. There is one manufacturer that I deal largely with, and to that manufacturer, for all expenses and everything, we pay him, under an agreement, five per cent.; that is for extra goods that we want particular care taken of and designs which are strictly ours and which no other house can have. As our business is largely retail, we have to have these designs which

are specially made for us, and for that reason we pay this man for giving us these designs that nobody else can buy five per cent., which is two per cent. more than the regular charge. If a house was doing a very large business, I believe that any house who would give them a certain quantity could have any design made for three per cent.

THE COURT: If any one wanted extra designs of their own gotten up, of a higher grade, they could get them by paying a higher price, if they used a large enough quantity of them?

A. We have had a contract or agreement with the manufacturers for years to pay but five per cent. I do not know as any one elss could get that same manufacturer.

By defendant's counsel:

We buy from probably six houses. We buy from Muser Brothers here. (Rec. 62 and 63.)

Plaintiffs' counsel read in evidence the reappraisement records in the other cases, in which others than Mr. Hirsh acted as merchant-appraisers, showing the testimony of several merchants (Rec. 64 to 77) and these further proceedings thereon, constituting "Exhibit 7." (Rec. 77 to 92.)

EXHIBIT 7.

In the Matter of the Reappraisement of Cotton Embroideries Imported by Muser Bros.

Before Hon. Geo. V. Brower, U. S. General Appraiser; John Gibb, Esq., merchant appraiser.

NEW YORK, May 25th, 1887.

6735. Cotton embroidery imported by steamship "La Normandie" from St. Gall. by Muser Bros., entered May 11, 1887.

Mr. Charles Curie is present as agent for the importers.

Mr. Curie desires to know whether the board—the

respective members of the board—consider it their duty to make a market value of themselves, independent of any evidence of purchase and sales of like goods abroad, other than those furnished by the invoices in question and independent of the provisions of section 9, act of March, 1883.

THE GENERAL APPRAISER: The general and merchant appraiser will use all reasonable ways and means for ascertaining the market value of the merchandise in question.

MR. CURIE: That is not an answer to my question.

THE GENERAL APPRAISER: We shall ascertain the true market value as provided by the statute and regulations concerning the same.

MR. CURIE: That is vague and does not give the information required, and I object to the answer as indefinite. I ask you to answer it.

THE GENERAL APPRAISER: I have. I shall not appraise these goods to suit Mr. Muser, and I shall certainly do so according to law and leave it to be determined hereafter whether it has been properly done.

MR. MUSER is sworn by the general appraiser and questioned by Mr. Curie:

Q. Mr. Muser, you are an importer of these goods?

A. Yes, sir.

Q. And you imported these particular goods?

A. Yes, sir.

Q. At the rate in this invoice?

A. Yes, sir.

Q. In the open market, or did you have them made?

A. We had them made.

Q. Why did you not buy them in the open market?

A. Because we could not find them—such goods—in the open market.

Q. To the best of your knowledge and belief, you could not buy like goods in the open market?

A. No, sir.

Q. Does this invoice represent the actual cost of those goods to you?

A. With the expenses, the addition of the 10 per cent., it does.

Q. How does that 10 per cent. additional come to be on your invoice for manufacturer's profit ?

A. We were compelled to have our own goods passed through the appraiser's office to have this advance as a so-called manufacturer's profit.

Q. None of that 10 per cent. was paid by you ?

A. No, sir.

Q. In declaring your value on entry, did you declare the 10 per cent. as part of the entry ?

A. I did not. I deducted it.

Q. And the declared value as made by you is the actual value of the goods ?

A. Yes, sir.

Q. That includes the cost of material ?

A. Everything—stitching, finishing, laundrying, packing, and so forth.

Q. Everything for shipment ?

A. Yes, sir.

By the General Appraiser :

Q. Mr. Muser, what is the first step taken in the production of these goods under reappraisement ?

A. I made a contract with the manufacturer to make certain patterns at certain prices agreed upon.

Q. Did you buy this material in the grey ?

A. From the manufacturer of the grey.

Q. What did you pay for it in the grey, and where did you purchase the cloth upon which the embroidery is made ?

A. I believe it is bought from a Manchester agent.

Q. You purchased it in Manchester ?

A. I don't know.

Q. Was it purchased in Manchester through your office in St. Gall and then shipped to Switzerland ?

A. Maybe.

Q. In all probability, was it purchased by your house in Manchester ?

A. In all probability, in St. Gall.

Q. Do you not know whether it was in Manchester or in Manchester by your agent in St. Gall?

A. That's it.

Q. What did you pay for the material in the grey?

A. The market value.

Q. What was the market value?

A. I can't tell you. I don't know the prices of the cloth in the grey.

Q. After the goods were purchased in the grey what was done with them?

A. We then sell the goods to the manufacturers with whom we made contracts for stitching.

Q. Do you know whether or not you sell the grey cloth to them at the same price you pay?

A. My buyer can better answer that question. My impression is that we sell at the same price that we pay. Our only object in buying and selling it to the different manufacturers is in order to have the same quality of the cloth in our line of goods. If we did not do so and allowed each manufacturer to furnish his own cloth, we would be likely to have as many different qualities of cloth as there are manufacturers working in their line.

Q. You deliver this cloth to the manufacturers at St. Gall?

A. Yes, sir.

Q. What is the next step?

A. He delivers the goods.

Q. He makes them, does he not?

A. Yes; that is not my step; the manufacturer does that. My next step is to receive the goods.

Q. Is it not in giving him some order?

A. After making the contract.

Q. What is that contract?

A. To make certain patterns of embroidery at a certain agreed price and in certain quantities.

Q. Are those patterns made exclusively for you?

A. Yes, sir.

Q. Can the merchant appraiser have these same patterns ?

A. No, sir ; he could not.

Q. Who makes the designs ?

A. We buy them in Paris or St. Gall and have a designer of our own—our office has. I had one here several years ago.

Q. What is the contract you make with the manufacturer of these embroideries—to make it at so much per stitch ?

A. Yes, sir.

Q. What was your agreement with him for this per 100 stitches ?

A. The invoice will show. I can only speak of my general knowledge of the way the affairs of the office are conducted.

Q. You only have an office at St. Gall. ?

A. Yes, sir.

Q. No warehouse for storing these goods ?

A. Merely for the finishing, I suppose.

Q. From your knowledge of that, do you have an office to finish them ?

A. I suppose they must have sufficient room to cut them up and finish them.

Q. What is the next step ?

A. The manufacturer delivers the goods to us—to our office.

Q. What do you do with them next ?

A. We have them bleached and finished and invoiced and shipped.

Q. Will you describe the process of bleaching, and where it is done ?

A. By a bleacher.

Q. On the premises ?

A. No ; by a man who makes it his special business.

Q. When you give these goods to the bleacher, does he come to your office for them ?

A. I don't know whether we send them to him.

Q. He bleaches them at so much ?

A. At market rates.

Q. And then he returns them again to you ?

A. Yes, sir.

Q. Well, what is the next step ?

A. I believe it is to cut them into proper lengths

Q. Is the cutting done on your premises ?

A. I suppose so.

Q. When this invoice was prepared, did it include the cost of the goods in the grey, the price per 100 stitches, the bleaching, the finishing, and the cutting ?

A. Yes, sir.

Q. Did it include anything else ?

A. The ten per cent. excluded.

Q. Nothing else whatever was put in ?

A. Yes (nothing else).

Q. Were office expenses put in ?

A. No, sir.

Q. Were agents' expenses ?

A. That would be part of the office expenses.

Q. Then neither the agents' expenses nor that of other employees is put into the price of these goods ?

A. No, sir.

Q. Can you purchase these goods in the open market at that price ?

A. You cannot buy the same patterns, but similar goods.

Q. At the same price ?

A. At the same stitch rate.

Q. Will you please explain how it is possible to sell these goods at the same price when you say you do not add the cost of maintaining an office and the agent's expenses ?

A. Because the purchasing by those who have no office at St. Gall. is done through commission-houses, and the work that is performed by my office in St. Gall is performed for these buyers by the commission merchants, who charge a commission for services, which generally, as far as I know, is 3 per cent.

Q. That includes the cost of the designer in Paris or any other part of the country ?

A. It may or may not ; I don't know.

Q. You think a man on 3 per centum can keep an office, have designers, and shipping to various places ?

A. He would charge all this besides. It is only office ex{ enses.

Q. That would not include the price of designs and cutting them up, would it ?

A. I think it would depend on the quantity of the goods produced.

Q. Is there any commission merchant in St. Gall, to your knowledge, who is furnishing designs, taking the goods in the grey, taking them to the houses to be manufactured, from there again to be bleached, and from the bleacher again to be cut ? Is there any man doing that on 3 per cent. in St. Gall. ?

A. Lots of them ; all except furnishing the designs, and some of them may even do that.

Q. What is the cost of your designs of this lot of goods ?

A. That is very hard to estimate.

Q. Can you give us the price of your designs ?

A. I must look at the books for that. I have them here in my pocket.

Q. What would you make that set for (referring to sample of invoice under reappraisement) ?

A. I don't know. I have not been over there in 14 years. You can get the facts better from my buyer who is here.

By the Merchant Appraiser :

Q. He has to have a warehouse in St. Gall, but he calls it an office ; he has people there to cut up goods, examine goods, and put wrappers and tickets on them ?

A. Yes, sir.

Q. The first thing the superintendent does is to buy the cloth from Manchester—Jones Brothers—and send it to St. Gall for sale ?

A. I don't know.

Q. Then you make your designs, fetch your cloth to the man who owns the machines, and make a contract with him to do the stitching at a certain rate per 100 stitches; he does that, and then sends the goods to your warehouse, where the people examine them and say whether the quantity and quality is correct?

A. Yes.

Q. Then you send these goods to the bleacher and he charges so much per coupe?

A. Yes, sir.

Q. Then he returns them to your warehouse, the clerk reexamines them and finds out if any of them are damaged; then, if they are all right, they are cut up in pieces of 2, 3, 4, 5 or 6 stripes, according to the widths; they are there carefully folded, tied up, ticketed, charged, and shipped; that is the process in brief?

A. Yes.

By the General Appraiser:

Q. The only charges that enter into it are the money you pay out for cloth in the grey, stitching, and bleaching, as the cost price of the goods; what other manipulation have you added?

A. Bleaching, boxing, ticketing, cutting and folding.

(To the merchant appraiser:) You know that all of those proceedings that have been enumerated you have done yourself through commission-houses in St. Gall for three per cent.

THE MERCHANT APPRAISER: I don't know anything of the kind. I will tell you what I did say; I said I bought my goods net, finished, and paid 3 per cent. commission.

A. The regular commission in St. Gall is 3 per cent.

The General Appraiser:

Q. Does it cost you 3 per centum or over to establish your warehouse or manufactory at St. Gall and to employ help and clerical hire there? What is that?

A. I don't know; that depends. It is regulated by

the extent of the business. We do a business there of over a million francs a year.

Q. Does 3 per centum pay all your expenses?

A. I think it does.

Q. It covers all the expense you incur for your warehouse and clerical force, together with all the working force?

A. I think it must. We did not establish the office there only to supply us with goods. They act as commission merchants for different houses in London, Paris, and St. Petersburgh and do their business for 3 per cent.

Q. Do I understand that your house is doing a commission business for other places?

A. Yes, sir.

Q. Are you selling these identical goods at St. Gall to English, German, or other houses at the price you invoiced them at?

A. Yes, sir.

Q. Name the houses.

A. I can name one; H. Muser, St. Petersburgh.

Q. Who is H. Muser?

A. My brother.

Q. Is there anybody besides your brother you sell these goods to at that price?

A. I don't know. I know for a fact that it is done. There are other houses, but I can't give you the names. All we do here is to send over orders and sell the goods that we get. Generally the business is done in Bruxelles.

Q. Have you put upon these goods as merchandise anything whatever by way of profits?

A. No, sir.

Q. Is this all your own capital employed in this business?

A. Certainly.

Q. Throughout the whole business?

A. Except, I suppose, when they run short they use their credits with bankers.

Q. Have you added anything for interest on capital invested ?

A. No, sir.

By Mr. Curie :

Q. Mr. Muser, what is the usage of the embroidery trade generally respecting the purchase or procurement of goods on the other side—are they or are they not represented by their own agents ?

A. Every buyer of embroidery must have an agent. Those who have not their own office to attend to the finishing have it done through commission offices.

Q. Does the same rule prevail at other places as at St. Gall.?

A. Yes, sir.

Mr. Curie to the General Appraiser : Have you any objection to introducing the testimony of these gentlemen here to the effect that it is a usage at St. Gall., where these goods are purchased, to buy them and procure them in the manner in which Mr. Muser stated he has procured them ?

The General Appraiser : It is admitted that Messrs. Einstein & Hirsch, Messrs. Loeb & Schoenfeld, Messrs. Guggenheim Sons, and Messrs. Rappard & Co. do business in the same way. The general appraiser, in appraising these goods, will find out what reputable merchants pay in the open market for these or for similar goods, and he will appraise all goods in a similar way.

Mr. Curie : We insist that our goods are either dutiable under the provisions of section 2906, R. S., as amended by section 7, act of March 3, 1883, if the market value of the goods can be ascertained by actual purchase and sale of the article abroad or a similar article, and if not, then their dutiable value will be ascertained under section 9 of said act, without any additions for commissions or for profits or incidental charges whatever in the putting up, and packing, as stated in section 9.

THE GENERAL APPRAISER: The general and merchant appraisers say they will give the suggestions of Mr. Curie their due consideration and will endeavor to appraise them pursuant to the statutes in that case made and provided.

Mr. MUSER: I am willing that 3 per centum shall be allowed to cover warehousing and incidental expenses not covered by the invoice instead of 10 per cent.

Adjourned.

H. GOWER HARE,
Official Stenographer.

Before Hon. Geo. V. Brower, U. S. General Appraiser; John Gibb, Esq., E. E. Eames, Esq., Merchant Appraisers.

NEW YORK, October 7th, 1887.

♯12156. Three cases cotton embroidery, per S. S. "La Champagne", entered Sept. 19th, 1887; entry ♯135,502. Mr. Eames, merchant appraiser.

♯2878. Two cases cotton embroidery, per S. S. "La Normandie", entered Sept. 7th, 1887; entry ♯131,315. Mr. Eames, merchant appraiser.

♯16661. Two cases cotton embroidery, per S. S. "La Champagne", entered July 2, 1887; entry ♯108,471. Mr. Gibb, merchant appraiser.

Mr. Charles Curie appears as agent for the importers.

It is consented on the part of the importers that the testimony taken at a previous reappraisement, held May 25th, 1887, at which Mr. John Gibb acted as merchant appraiser and Messrs. Muser Bros. were the importers, shall be considered as part of the evidence in this case.

Mr. J. KOENIG sworn, examined by the general appraiser.

Q. What is your business?

A. I am engaged in cotton embroideries.

Q. Are you familiar with the manufacture of cotton embroideries, with all the details of preparation?

A. I am, sir.

Q. How long have you been engaged in that business?

A. Thirteen years.

Q. In St. Gall?

A. Everywhere, sir.

Q. And you are familiar with the course of the preparation of the goods for market?

A. Yes.

Q. Please explain to us the details—how the business is done in St. Gall. The goods are purchased in the grey, are they not?

A. I don't know exactly how it was in this special case, but as a rule they are.

Mr. MUSER: I desire to state to the witness that the goods were contracted for with the manufacturer at stitch rates, and were then delivered to my office in St. Gall. I furnish the patterns in most cases.

Q. The goods are purchased by you in the grey?

A. Yes, sir; delivered by the manufacturer in the grey; he has nothing to do with the bleaching. I would like to ask Mr. Koenig one question.

Q. Are you familiar with the commissions usually paid in St. Gall for doing the business for American importers that my office in St. Gall does for me?

Mr. KOENIG: A. I am; yes.

Q. Will you state what it is usually?

A. It is generally claimed to be done about on a commission of three per cent. They claim to do it.

Q. If I want to change my business and to abolish my office and give my business to a commissionaire, with facilities on my part to see that no more than the actual stitch rates paid are charged to me, what commission do you think a commissionaire in St. Gall would be willing to accept on that contract?

A. He would do it for a commission of 3 per cent. and the usual discounts.

Q. You think he could?

A. I do.

Q. How much is that?

A. Two to three per cent.

Q. If I want to be in such a position as to make an arrangement with a commission-house in St. Gall that I will be at liberty to satisfy myself at any time that any drawbacks he receives are returned to me, and that they will do the business on a naked commission, what rate do you think a good commissionaire in St. Gall would accept it at—on a business of not less than two million francs a year?

A. In this particular case, if you would furnish the commissionaire the money—the capital—to do the trade with, and pay him the fair market wages, as would be paid by a firm of high standing over there, I should think he would do it for 3 per cent. and some additional cash discounts. The rule is 3 per cent. That is what they claim, but they all get the drawback.

THE GENERAL APPRAISER: Q. What does that amount to?

A. It depends upon the house. They have a man to watch things there, for which they pay extra; but they can do it for 3 per cent.

Q. If this business was done without the employment of a man's capital and without furnishing the designs, what, in your judgment, would be the whole amount of that net rate for delivery—how much more than the cost of the goods? Would 10 per cent. cover it?

A. It depends upon what returns the house makes and the way they do. It is very flexible, and it is a *very arbitrary system of fixing up the market value* at the gross price of the goods.

Q. Where the commissionaire employs his own capital and where he does all the work and furnishes all the designs, in your judgment does 10 per cent. cover the whole expense over and above the cost of the goods in the grey and the stitching?

A. Oh, yes.

Q. Do they furnish the market for less than that 10 per cent?

A. There are houses who can do it, and others who do it in the ordinary run of business. I think I will have to calculate it.

Q. Have you stated that 10 per cent. did not cover it?

A. In a good many instances it does not cover it. It is very difficult to fix a standard.

Q. The use of the commissionaire's capital in business is worth something over there, isn't it?

A. Certainly.

Q. It goes to add to the intrinsic value of the goods?

A. Certainly.

Q. In your judgment, would ten (10) per cent. be too small an exaction where the capital and everything is used and placed in the business?

A. There are houses who can do it for less, and others for more. As I once previously stated, one house is called before the tax commission in St. Gall. They tax them upon a certain amount; then they claim that they have a loss which amounts nearly to 10 per cent. on what they do in the business. If they offer to show the books, I think it is quite proof that those houses have heavy expenses; but in this particular case, where I used to be with Mr. Muser, I have to state that by the way they employ the men they arrange it so that the expenses in St. Gall are covered beforehand. The manager gets an interest in the money—what he makes over the expenses; therefore it is quite contrary to the other illustration just made, where houses claim that they have so much loss in order to evade the taxes over there.

Q. What do you mean when you say that Muser Bros. pay a premium to certain men?

A. I mean to say that Muser Bros. charge their proper expenses—that is, what they have laid out for getting the goods in, for getting them ready, and charging an additional commission, and this commission covers more than the expenses they have in St. Gall.

By Mr. Muser:

Q. You were the buyer for the London branch. You went to St. Gall and bought goods. How much commision did we charge the London branch?

A. Five per cent. if I am not mistaken.

By the General Appraiser:

Q. And they charge that 5 per cent. to their branch house in London to themselves?

A. Yes.

Q. When they employ their own capital between themselves?

A. Yes.

Mr. Muser: The London business is charged on all the capital we used. The London house had nothing to do with the expenses on the other side. It is true that no interest is charged to the house at London, and no interest is charged to myself on the employment of capital.

By Mr. Gibb:

Q. Are there houses in St. Gall. known as embroidery manufactories?

A. Yes.

Q. First-class houses?

A. Yes.

Q. Such a house as Eckle Freres?

A. Yes.

Q. They are manufacturers from the word 'start'?

A. They are the first manfacturers in St. Gall.

Q. There is no house of higher standing there, possessing the same or better facilities for manufacturing?

A. No, sir.

Q. Now, Eckle Freres manufacture embroidery in a *bona fide* way. The first step they take in the manufacture, I understand, to be this: they hire or buy a warehouse or building. (No answer.)

By the General Appraiser:

Q. Muser Bros. have a house there?

A. They rent one.

By Mr. Gibb:

Q. They engage a warehouse; that costs considerable money, does it not?

A. Sixty thousand dollars.

Q. Then the next thing to do is to engage a staff of designers?

A. Yes.

Q. They get large salaries, as a rule?

A. The highest.

Q. In addition to that, they have a staff of book-keepers, clerks, and other people to attend to business?

A. Yes.

Q. Then they begin by having a high-priced warehouse, a good staff of efficient employees: then they get the designs together, making them or buying them, which costs Mr. Muser 3 per cent.?

MR. MUSER: I did not say it cost that.

MR. KOENIG, resuming, examined by Mr. Gibbs:

Q. Then they go to work and buy their lot of cloth in the gray from Manchester houses or others?

A. Yes.

Q. Then they give out a notice that they have a lot of goods to embroider?

A. Yes.

Q. Then the men who own the machines in the country come around and bid on the stitching?

A. Yes.

Q. A bargain is struck as to price, and the stitcher gets the design and cloth and brings it back stitched?

A. Yes.

Q. The people in the house check the goods, see that it is done according to contract, and then the man is paid?

A. Yes.

Q. And when paid he loses a few per cent. for cash discount?

A. Two to 3 per cent.

Q. Then the goods are taken in charge by the

bleacher, from the people in the house, or sent to him; he bleaches them and charges so much per piece?

A. Yes.

Q. When that is done they are brought back to the house and examined and checked off and prepared for shipment, invoiced and boxed, and all that sort of thing?

A. Yes.

Q. That is about the course of the manufacture?

A. Yes.

MR. MUSER examined by Mr. Gibb:

Q. That is the process as described in your last case?

A. Yes.

MR. KOENIG examined by Mr. Muser:

Q. You made a statement as to taxes being levied in St. Gall., and that the answer had been made by different manufacturers that they not only did not make any money in St. Gall., but their expenses were more than they invoiced their goods at, and consequently they incurred a loss: you made that statement?

A. At the end of the year they had a deficit.

Q. Was our office included amongst those who made such statements?

A. No, sir.

By the General Appraiser:

Q. In your judgment, Mr. Koenig, is Eckle Freres a representative house?

A. Oh, yes.

Q. There are a number of such houses, are there not?

A. Yes; but Eckle Freres house takes the first place.

Q. Looking at the process from its inception to its conclusion, do you think 10 per cent. over and above the cost of these goods anything more than a fair *profit* to be made on this, drawbacks and cash dis-

counts included—would that percentage be more than a fair *manufacturers' profit?*

A. No; that would not be any more.

By Mr. Muser:

Q. Mr. Koenig, you say that 10 per cent. would not cover the expenses of an office in St. Gall. such as ours?

A. I did *not* make that statement.

Q. What percentage, after allowing 3 per cent. for designs and incidental expenses, do you think would cover all our expenses in St. Gall.; I mean the expenses of our manager, rent, offices or store-house—in fact, anything that enters into the carrying on of that office and shipping our goods—including everything?

A. That is very hard to answer.

Q. Do you think 3 per cent. would cover the expenses for designs on the business we do in St. Gall.?

A. Yes, sir.

Q. You think that would cover it fully?

A. I do think so.

Q. After that is paid, there would remain nothing but the superintendence, manager's salary, store rent, and all other expenses of the office; how much would that be or, in other words, how much would you do it for?

The General Appraiser: Mr. Koenig, you think 3 per cent. would fully cover the designing?

A. Yes; 3 per cent. would cover the designing.

Q. How much will it cost, now, for all the other labor connected with the preparation of these goods ready for the market, including office and store rent and clerical hire?

A. I should say another 3 per cent.

Q. How much, in your judgment, would the interest on the investment and the risk run in the transaction of this business come to?

A. That I cannot answer.

Q. The interest on capital while lying there is worth something?

A. Sure.

Q. Is there not a risk of loss in all manufacturing business?

A. Certainly.

Q. You have not included that, have you?

A. I have not.

Q. Do you think that where a manufacturer assumes all the risk 5 per cent. is a very small amount?

A. Very small. I know of houses that have to pay 8 per cent. to carry on business.

By Mr. Muser:

Q. How much capital would you need, if you paid on the day of shipment, to do thatbusiness in St. Gall.?

A. I should think that our house, who furnishes the funds, would have to calculate about half the amount on the return of the capital that is invested; a million francs if you are making two millions return.

Q. Please explain how you get at that. You pay for the goods when they are delivered to you in the gray, and you get your money when they are bleached?

A. It takes two or three weeks.

Q. That, then, is all the time the capital is losing interest?

A. Yes; but, speaking of the capital it takes, we have to reckon how much we will have ready to pay.

Q. You say it takes three weeks to finish the goods?

A. Yes.

Q. Then you admit that all the money I have paid to the manufacturer when he turns the goods over to me is only the charge of that office for three weeks?

A. I don't know.

Mr. Muser examined by the General Appraiser:

Q. What would you say the use of your capital is worth?

A. I would work that place with 150,000 francs.

Q. What would be the interest?

A. Four per cent.

Q. Any risk?

A. No.

Q. None whatever?

A. No, sir; it is the manufacturer's interest to turn out good goods.

By Mr. Gibb:

Q. You state that the house in St. Gall is entirely separate and distinct from the house in New York, and that when they ship from St. Gall the house in New York pays you the money?

A. Our Bruxelles house has charge of all the finances. When the American goods are shipped to any of the offices, that particular branch is charged and pays interest from the shipment.

Q. The two houses are entirely separate, and yet the house in St. Gall invoices the goods to the New York house at the cost of the cloth, stitching and bleaching; that is what you claim, and that is about 3% added on. The New York house buys goods from St. Gall at exactly what they cost?

A. No, I did not say that. We have made in some years 69,000 francs profit.

Q. How much cheaper would you sell your goods than invoiced to you?

A. I would sell to any one at the same price, with a commission of 5 per cent. added.

By the General Appraiser:

Q. Would that include all the *costs or charges which go to make up the 10 per cent.* we have just heard about?

A. I do not include the 10 per cent. in that. I mean the invoice value added to that commission of 5 per cent. It should be 3 per cent. for expenses and 3 per cent. for commission.

Q. I do not believe that that business can be done there safely under 10 per cent., which seems to be a modest sum. A man cannot employ capital without some risk. I see you would charge foreign houses 5 per cent. additional, and yet it costs you 3 per cent. for getting up your patterns; now, that makes 8 per cent. on your part.

A. I have not said that. I will say that we charge to my brother in St. Petersburg only 3 per cent. I would undertake to do business for any other house charging 3 per cent. for expenses and 3 per cent. for commission, and what I said before is that we charge the other branches 5 cent., and that includes 3 per cent. for designs.

Q. I cannot see how a man can do business so close as that and be safe. Do you mean to say that you would undertake to furnish the goods for 3 per cent., in addition to 3 per cent. for designs?

A. I would do it.

Q. No man in this country can do a legitimate business on 3 per cent.

A. You think so, but have you any actual knowledge?

Q. Yes, sir; I have practical knowledge and *I know of some cases where they are running their looms for nothing* to keep their men employed.

A. I merely want to do a commission business and will do it for 3 per cent. I have spoken to a very large importer in this country and have made him the same proposition. It would pay me well if I did it. We can just as well double the business. I do not manufacture. My office acts as a commission-house and nothing else, and if I am compelled to add this 10 per cent. I shall simply turn around and abolish my business.

Mr. Gibb: One of the largest manufacturers of St. Gall. is coming here to do business for 10 per cent.

Mr. Muser: That is not any evidence, and I protest against anything of the kind being introduced. All I do is exactly what other parties do.

The General Appraiser: When you show us other parties who are getting their merchandise into this country any cheaper than you, it will be seen to that they are advanced.

Mr. Muser: The appraiser only raised the question whether I shall add 3 per cent. That I have added;

but I have demanded this reappraisement as a protest against this 10 per cent. under the regulations of the Treasury Department. I have proved that I can do my business in St. Gall. for 5 per cent. commission. Why should I be compelled to add 10 per cent. when I can get it done for 5?

Mr. Currie: The market value of the goods is the value in the grey, and with the expenses for bleaching, shipping, etc., added, that would constitute the dutiable value; but to put on that value the commission or incidental expenses in purchasing the goods would be contrary to section 7. The prices from the manufacturer who turns out the embroidery may be cash prices. If the goods are purchased at a certain price in the grey and paid for right there, that ends it; that, in brief, is what I submit. That makes the market value of those goods, so that there is no necessity for inquiring into the capital as entering into the value of the goods.

The General Appraiser: I am narrowed down by the statute and must follow the law exactly.

Adjourned.

H. Gower Hare,
Official Stenographer. (Rec. 77 to 92.)

Plaintiffs' counsel then called as a witness Edward E. Eames, who, having been duly sworn, testified as follows:

"I am a merchant in this city, and acted as merchant appraiser on certain importations of embroideries by Muser Brothers. In the invoices, Exhibits 6–i, 3–i, and 2–i, I acted in respect to those goods and find my reports here. I attended upon reappraisement in conjunction with the general appraiser for the time being and made certain reports as to each of these invoices and added six per cent." (Rec. 92, fol. 134.)

Q. To cover what? For what purpose and on what grounds did you make that addition of six per centum? *(Ibid.)*

Defendant's counsel objected to the question as immaterial. The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

WITNESS. "In two of these cases Mr. Brower was general appraiser and in the other Mr. Downes." *(Ibid.)*

Q. If either of them at the time of signing the report stated to you the grounds upon which they added the ten per cent., please state them. *(Ibid.)*

Defendant's counsel objected to the question as *immaterial.* The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

WITNESS. "I presume that witnesses were examined before me and testimony taken." *(Ibid.)*

Plaintiffs' counsel then called as a witness HENRY E. HOESLI, who, having been duly sworn, testified as follows:

"I am employed by Muser Brothers as buyer for their embroidery department and as manager of it; have been with the house since 1874. I was born in St. Gall., and was employed by Muser Brothers some time before coming to this country; have visited St. Gall once a year since 1881. I receive a salary and an amount equal to a certain percentage of the net profits of their embroidery business, and therefore I have an interest. I ascertained the expenses of the department of the office as it has been kept by Muser Brothers in St. Gall for the year 1887, and can state substantially what the percentage of the cost of that department in St. Gall was to the business done in the year 1887." (Rec. 92, 93.)

Q. Will you please state it? (Rec. 93, fol. 135.)

Defendant's counsel objected to the question as *immaterial.* The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

Q. Can you state the total expenditures of the office of Muser Brothers in St. Gall. for the year 1887? *(Ibid.)*

Defendant's counsel objected to the question as *immaterial*. The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

Q. In respect to the goods, the embroideries exported to this country by the house of Muser Brothers from St. Gall., what did the men in the employ of Muser Brothers do with respect to the obtaining and preparation of those goods for exportation?

A. Do you want me to tell all that is done in that office?

Q. All with respect to the goods that are exported to this country.

A. First, the designs are made; these designs are enlarged and stitches put in—in other words, patterns are made from them; then the cloth is bought and it is given to the manufacturer, together with those patterns; and the contract is made at a specified rate for the stitching—for the work. When those goods come back they are examined to see if they are properly stitched, and then they are given to the finisher.

Q. In the same building?

A. No; he comes and takes the goods away; he sees to their being bleached, starched, laundried, singed, folded loosely, and returned to us; then they are looked over to see if the finishing was done properly; then they are cut in strips, folded, ticketed, packed, invoiced, and shipped.

Q. And that is all that is done by the office of Muser Brothers or by those who are directly employed by them?

A. Yes; that is all that is done.

Q. Do you know what the salary of the designer was in 1887?

A. Yes.

Q. What was it? (Rec. 93, fol. 136.)

Defendant's counsel objected to the question as *immaterial*. The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

Q. Do you know the total amount of embroideries

obtained in the office in St. Gall. of Muser Brothers in the year 1887?

A. Yes.

Q. What was it? (Rec. 93, last line.)

Defendant's counsel objected to the question as *immaterial.* The court sustained the objection, and plaintiffs' counsel duly excepted. (Rec. 94, top.)

Q. Have you a specimen of the patterns?

A. That is a pattern as it is given in work (producing pattern)?

Q. This is a sample of the embroidery made from this pattern?

A. Yes.

Q. And this is the pattern which was given to the stitcher?

A. Yes.

Q. This pattern shows every stitch?

A. Every one.

Q. And enlarged a number of times, so that the machine can reduce it to a proper size?

A. Yes.

(The pattern referred to is offered in evidence and marked Exhibit 8.)

Q. Do you know at what rate in 1887 you could procure in St. Gall., or could ordinarily be procured to be done by other houses there, the same work that you have testified was done in the house of Muser Brothers?

A. Yes.

Q. Will you state what that was? (Rec. 94, fol. 137.)

Defendant's counsel objected to the question as *immaterial.* The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

Plaintiffs' counsel then called as a witness FREDERICK W. BROOKS, who, having been duly sworn, testified as follows:

I am a liquidator in the Custom House. I have made examination and calculations on invoices and entries herein as to the amounts paid. The amounts now given by me represent the duty paid by the plaint-

iffs upon the amounts added by the appraisers to the entered value. As to Exhibit 1, the principal is $53.60, and the interest $6.53; Exhibit 2, the principal is $76.80, and the interest $9.31; Exhibit 3, the principal is $34.80, and the interest $4.23; Exhibit 4, the principal is $72.80, and the interest $8.88; Exhibit 5, the principal is $10.40 and the interest $1.21; Exhibit 6, the principal is $10. and the interest thereon $1.21, making a total for the principal of $258.40, and a total for the interest of $31.37, and a grand total is $289.77; there was an addition of three per cent to the invoice value made by the importer upon the entry. The *invoice* value is the value contained in the invoice, and the *entered* value is the invoice value plus the addition of *three* per cent.

The amount of duty paid by the plaintiffs upon their addition on their entry to the invoice value of the merchandise in each of the exhibits, is as follows: Upon Exhibit 1, the principal is $32., and the interest thereon $2.66; Exhibit 2, the principal is $33.20, and the interest thereon $3.99; upon Exhibit 3, the principal is $15.20, and the interest thereon $1.82; upon Exhibit 4, the principal is $31.20, and the interest thereon $3.75; upon Exhibit 5, the principal is $4.40, and the interest thereon 50 cents; upon Exhibit 6, the the principal is $4.40, and the interest thereon 50 cents. (Rec. 94, 95.)

GEORGE V. BROWER, being called as a witness for plaintiffs, and having been first duly sworn, was asked the following questions:

Q. In making your report upon these several invoices and in adding ten per cent to the invoice value did you or not take into consideration as a part of that ten per cent. addition any *manufacturer's profit?* (Rec. 95, fol. 139.)

Defendant's counsel objected to the question as immaterial. The court sustained the objection and plaintiffs' counsel duly excepted. *(Ibid.)*

Q. Did you in making that addition ascertain the cost of the cloth, of the stitching, the bleaching, and finishing, and then add to that sum, as a part of the ten per cent., anything for *charges* incurred in the purchase and preparation of said goods for shipment? *(Ibid.)*

Defendant's counsel objected to the question as *immaterial.* The court sustained the objection and plaintiffs' counsel duly excepted. *(Ibid.)*

Q. Upon what ground and to cover what did you add the ten per cent. or the sum that you did add to the invoice? *(Ibid.)*

Defendant's counsel objected to the question on the ground *that the action of the reappraising board was final* and cannot be reviewed in this action. The court sustained the objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

The plaintiffs then rested. The defendant offered no evidence. *(Ibid.)*

Counsel for defendant then moved the court to direct a verdict for the defendant upon the ground that the plaintiffs had not proved facts sufficient to constitute a cause of action. (Rec. 95, fol. 140.)

Counsel for plaintiffs move that the plaintiffs be allowed to go to the jury upon the issues that were made.

The Court thereupon refused to submit the issues to the jury and directed the jury to find a verdict for the defendant.

The plaintiffs' counsel duly excepted to the direction and also duly excepted to the denial of the motion to submit the case to the jury. *(Ibid.)*

The jury thereupon rendered a verdict for defendant. *(Ibid.)*

Against the proceedings of the customs officers in the re-appraisements of their goods, and in the assessment and exaction of duty thereon, Muser Brothers seasonably protested, and took all statutory steps to present here the questions involved. (Rec. 40, fol. 53.)

Their protest was as follows;—

NEW YORK, December 2nd, 1877.

HON. DANIEL MAGONE,
Collector of Customs, New York.

SIR:—

We hereby protest against the standard of value adopted by the appraising officers, and of their appraised value as returned by them and approved by you, and your decision, liquidation and assessment of duties on said value as made by you, on our importations below mentioned, consisting of certain Cotton Embroideries upon each of the following grounds:

FIRST. Against your decision establishing or adopting as the standard dutiable value of said merchandise a value including besides the actual market value or wholesale price, commissions and charges non-dutiable under Section 7, Act March 3, 1883, and against all additions we are obliged to make on entry to cover such items of cost and to meet such standard, claiming that the said items of cost are not dutiable and that you have no legal right to assess duty thereon, and that it is part of your official duty to cause the proper dutiable value of said goods to be returned by the appraiser, which value should be exclusive of the items of cost mentioned, whereas on the contrary you have liquidated and assessed the duties upon the appraised value which includes said charges and costs contrary to the expressed provision of Section 7, Act March 3, 1883.

SECOND. We claim the dutiable standard of value of these embroideries as adopted by you and the appraising officers to be erroneous and illegal, because instead of appraising these goods at their actual market value or wholesale price in the gray,—their standard marketable condition,—and adding to such value the cost for laundrying and finishing them to their

present condition, and no more, as provided by Section 2906 R. S. and Section 7, Act March 3, 1883, there has been illegally included in the appraised value, besides such actual market value and cost of finishing, a further amount to cover the incidental charges incurred in the purchase and preparation of said goods for shipment; such charges or incidental expenses being for designs furnished the manufacturer, salary of the buyer and clerk hire, rent of buyer's office and rooms for putting up and packing for shipment, interest on money credits for the purchase of the goods, and for a profit or commission in excess of such aggregate cost, or one or more of such charges; which charges or items of cost we claim to be non-dutiable by force of Section 7, Act March 3, 1883.

Third. Dutiable at no more than the cost or value of the materials composing such merchandise together with the expense of manufacturing, preparing and putting up such merchandise for shipment as provided in Section 9, Act March 3, 1883.

Fourth. That all additions for a so-called commissioner's, or for a so-called agents or manufacturer's profit, or for charges of whatsoever character incident to the purchase or procurement of said goods, is made under duress to obtain our goods, claiming the same to be in excess of the legal dutiable value thereof, that they are non-dutiable, and the exaction of duty thereon illegal.

Fifth. We protest against the re-appraising officers including in their dutiable value under the pretext of returning the value of the goods *per se*, the non-dutiable items of cost mentioned, as illegal and a falsification of the facts; their appraised value assuming to exclude said charges, while as a matter of fact it does include them.

SIXTH. That the standard marketable condition of embroideries is in the gray, that the wholesale current market prices for regular goods bought in the regular manner is usually quoted in the gray according to the number of stitches contained in a given pattern; such price plus the market value of the mushn upon which the stiching is done, constitute their marketable value in their wholesale marketable condition; to this value is to be added the expense for laundrying and finishing, to make dutiable value under existing laws, and no more.

SEVENTH. We further protest against the practical denial of our right to a legal re-appraisement provided by Section 2930 R. S. in that the General Appraiser declines to go into the inquiry of the actual market value and wholesale price of said goods which obtains among first dealers, but insists that we shall be treated as *manufacturers* and that to the said cost, price, or value, there shall be added a further amount of 10% to cover a profit or commission or charges of some sort, thereby rendering the redress provided by said Section nugatory and of no purpose. We deny that we are manufacturers, and claim that we are merchants simply, purchasing our goods at the best advantages possible; claiming the right to do so as merchants; that we have no advantages not common to any and all discreet and experienced merchants, who will exercise due diligence in procuring their goods from first hands themselves, without the intervention of commissioners or middlemen; the fact of having an office and rooms at St. Gall and having certain patterns made to order by us from designs furnished by us does not constitute us manufacturers in the meaning of the term.

EIGHTH. That *if* held to be manufacturers, the addition of 10% above the actual cost of producing said goods is nevertheless illegal under the provisions of Section 9, Act March 3, 1883, for the ascertainment of dutiable values in such cases.

Ninth. That the provision of Section 2900 prohibiting the assessment of duty on less than the invoice value, does not justify the raising of our invoices to meet the exceptional and speculative prices which may be changed on invoices from jobbers, commission merchants or second dealers, in excess of the wholesale price at which the goods may be and are purchased on the spot from first hands by discreet and experienced merchants.

Tenth. That it is the wholesale price which obtains between first dealers which is the standard of dutiable value, and not the speculative and fluctuating prices which may be paid to jobbers or speculative dealers.

Eleventh. We therefore give notice that we pay all duties in excess of the duties as claimed above as the legal duty, under compulsion, and to obtain possesion of our goods; and we also give notice that we do not intend by this protest to relinquish or waive any right we may have to a refund of the difference between the duty exacted of us and any less duty which may hereafter

be adjudged the legal duty upon said goods, intending this protest to be made against the present duty charged upon said goods, claiming that said duty is not the legal duty to which said goods are chargeable, holding you and the Goverment responsible for all excess of duty exacted by you upon said goods above the legal duty, and protesting against all illegal exactions of duty thereon, and hereby give notice that we intend this protest to apply to all future similar importations by us, and also intend the duplicate protest herewith submitted for transmission by you to the Secretary of the Treasury, under the rules of your office, to be an appeal to him from your decision, and to likewise apply to all future similar importations by us.

			1887	Entry #		Liqd.
S. S. La Normandie	from	Havre.....	Aug. 9,	116102	cons.	Nov. 25, 1887
La Normandie	do.	do.	Sep. 7,	131315	cons.	Nov. 25, 1887
La Champagne	do.	do.	Sep. 20,	138532	cons.	Nov. 29, 1887
La Bretagne	do.	do.	Oct. 5,	147595	cons.	Nov. 28, 1887
La Bourgogne	do.	do.	Oct. 11,	150674	cons.	Nov. 29, 1887
La Normandie	do.	do.	Nov. 11,	168439	cons.	Nov. 25, 1887

Very respectfully,

MUSER BROS.,
by CHAS. CURIE, Atty. (Rec. 38 to 40.)

Assignment of errors.

The plaintiffs in error assign for error;—

I. The granting of defendant's motion to have a verdict directed in his favor, upon the ground that the plaintiffs had not proved facts sufficient to constitute a cause of action. (Rec. 95, fol. 140.)

II. The denial of plaintiffs' motion to submit the cause to the jury upon the issues made. *(Ibid.)*

III. The verdict for the defendant, so rendered by direction of the court. (Rec. 7 bottom.)

IV. The judgment for the defendant upon such directed verdict. (Rec. 8 top.)

V. The protest of Muser Bros. (Rec. 38, 39) stating that an illegal item had been added to the market and invoice value of their goods to arrive at the dutiable value, upon which the excess of duty they here

seek to recover was assessed; and protesting that this course contravened the provisions of Sections 7 and 9 of the act of March 3, 1883, and other pertinent statutes;—in order to show that the thing of which they so complained was actually done, called the customs-officer whose duty it was to examine the goods; and, to show the character of the examination, as *only* affixing this item of "manufacturer's profit," asked the witness, with relation to such examination; "What did you do?"—which question the court excluded, upon the *sole* ground that it was "immaterial;" and plaintiffs excepted. (Rec. 41, fol. 55.)

This exclusion plaintiffs now assign as error.

VI. Upon the state of facts indicated in the next preceding assignment, the same witness was asked, with a view to show his participation in the reappraisement, and what course was pursued therein, this question;—

"Did you have to do with the re-appraisement of the goods?"

This question the Court, upon defendant's objection, excluded as *immaterial*;—which exclusion the plaintiffs now assign as error.

VII. In 1885, there was a meeting of embroidery importers in New York, at which a paper was drawn up and signed, with others, by Richard Muser, one of the plaintiffs; who, at the same time, denied the legality of the course of appraisement recommended in that paper, to wit, the adding of ten per cent. as "manufacturer's profit." (Rec. 46, par. 2nd) Plaintiffs' importations in suit were in the fall of 1887, and protests against this ten-per-cent. exaction were made, in every instance, in Dec. 1887. *(Id. 5.)* This paper was offered and received in evidence, over plaintiffs' objection and exception to it as incompetent. (Rec. 45, fol. 63.)

The admission of this paper in evidence, plaintiffs now assign as error.

VIII. To show the necessary expenses of conducting plaintiffs' business at St. Gall, the United States Attorney, upon cross-examination, asked Richard Muser, as to the firm's buyer and superintendent at St. Gall, this question ;—

Q. "He is paid a salary by your house ?"

The plaintiffs objected that the question was immaterial, this salary not being (in law or fact) a part of the cost of manufacturing the goods. (Rec. 47, fol. 66.)

The admission of this question, excepted to, plaintiffs now assign as error.

IX. The United States Attorney, cross-examining, asked the same witness this question ;—

Q. "If you sold those goods to some other house, you would have to include all the various items of expense in the expense of your goods before you could realize anything ?"

Ans. "This is just the point I am contesting. I say that my house on the other side is a commission house for us. If I would hire another commissioner in St. Gall, he would do exactly the business my house does for me, and he would charge me 3% or 5% commission, and that commission is not dutiable ; whereas, when I am compelled to add 10% to my invoice, they make that 10% double, and I pay 4%, and fare 4% worse than my neighbors do."

Upon defendant's motion, this answer was stricken out as irresponsive. To this the plaintiffs excepted, and now assign the same as error. (Rec. 48, fol. 67.)

X. Referring to the paper mentioned in the fifth assignment, *supra*, the United States Attorney asked Mr. Richard Muser this question ;—

Q. "Is it not a fact that at this meeting where these resolutions were adopted which I have just read to the jury (Deft.'s Ex. A) that every house doing a considerable business in this city in cotton embroideries was represented ?"

Plaintiffs' counsel objected to this question as immaterial. The court admitted it upon the theory that

"it being a matter to be determined by the appraiser what *the expense of manufacturing* is, the statements of those who are in the trade is competent evidence for the appraiser," etc. (Rec. 48, fols. 67, 68.)

The admission of this question is now assigned for error.

XI. Upon the same subject, the United States Attorney next asked the same witness, if the five houses whose representatives signed these resolutions as committee (Rec. 47 top) "were five of the largest and most representative houses dealing in these goods?"

To this question, plaintiffs objected, and excepted to its admission; which we now assign as error. (Rec. 47, 48.)

XII. Referring to the expenses of their St. Gall house, his own counsel asked Richard Muser;—

Q. "State whether those expenses are or are not similar expenses to those that are made by a commission-house which makes a charge for its services?" *(Id.* 49 middle.)

The defence objected to this question as immaterial, and it was excluded *(Ib.);* which the plaintiffs now assign as error.

XIII. Plaintiffs' counsel asked Mr. Muser, as to the paper, Deft's. Ex. A (Rec. 45 to 47);—

"Did you understand that it was an agreement with the Government, or that the Government was bound by it, in any way?"

Upon defendant's objection to the question as immaterial, the writing explaining itself, it was excluded. (Rec. 49, fol. 69.) This exclusion is assigned as error.

XIV. The same witness was asked by his counsel, as to this same paper;—

Q. "Was the 10% referred to in the resolution fixed for any particular time, or was it the general average for the whole year?" (Rec. 51 top.)

Objected to and excluded "as indefinite and immaterial." This is assigned for error.

XV. The exclusion of this question, put to Mr. Muser by plaintiffs' counsel, is assigned for error ;—

Q. "Were there, in 1887, commission houses in St. Gall which did the same thing for other importers or purchasers that is done by your house there for your house here ?" (Rec. 51, fols. 72, 73.)

XVI. We assign for error the exclusion of this question put to Mr. Muser by his counsel ;—

Q. "For what percentage of compensation would the same thing be done by your house in St. Gall, in 1887, in relation to the obtaining of these goods there, and shipment there? For what percentage could that have been obtained to be done by other houses there ?" (Rec. 51, fol. 73.)

XVII. The exclusion of this question, also put to Mr. Muser, is assigned for error ;—

Q. "Did you yourself purchase goods through a commission-house in St. Gall, as well as obtain them through your own house ?" *(Ibid.)*

XVIII. Henry W. Coombs was general appraiser at New York in 1885, when deft.'s exhibit A (Rec. 47) was signed, familiar with the controversy as to appraising cotton embroideries, and investigated the subject, by direction of the Secretary. (Rec. 51 bottom.) He was asked, by plaintiffs' counsel this question, which was objected to and excluded, as IMMATERIAL, and plaintiffs excepted ;—

Q. "Will you state whether or not there was any market-value for cotton embroideries in Switzerland in 1885, and since that time." (Rec. 52 top.)

The excluding of this question we now assign as error.

XIX. Michael F. Maloy was called by plaintiffs as an expert witness, in the habit of going to Switzerland,

as a buyer of cotton embroideries, for seventeen years; and thus "familiar with the course of business at St. Gall, with respect to embroideries." He stated that finished embroideries were not there kept in stock, but were made upon orders, according to patterns furnished; the cloth being supplied with the patterns, and both are given to the manufacturer to make. He was then asked; "And the manufacturers do what?"

Cross-examined by defendant's attorney as to competency, he testified that he had to see "whether the thing is right or not during the process. . . . I see that the price is right on the start, and then that the finish is correct. I see that my instructions are followed out *all the way through*. They do not do *anything* unless by my instructions, even to the boxing, ticketing and the general details throughout. I superintend the whole business."

Upon defendant's objection, the court ruled the witness was not qualified to answer the question asked (Rec. 52, 53); which ruling is now assigned for error.

XX. The same witness was asked by plaintiffs;—

Q. "Will you state what was the usual rate of commission in St. Gall, in 1887, of these commission-houses? (Rec. 53, fol. 76.)

This question was excluded as immaterial *(Ibid)* and its exclusion is assigned for error.

XXI. The same witness (Maloy) with the experience indicated in the nineteenth assignment, and found on page 52 of the record, was asked by plaintiffs this question;—

Q. "Please state whether or not goods like those of Mr. Muser's, and such as were imported in 1887, had a market-value in St. Gall"? (Rec. 53, fol. 77.)

Objected to "as *calling for a conclusion.*" The Court sustained *the* objection, and plaintiffs' counsel duly excepted *(Ibid.)* and the excluding of this question is now assigned as error.

XXII. Plaintiffs asked the same witness this question;—

Q. "Were any goods of the patterns of Mr. Muser goods for sale, or could they be obtained upon orders in St. Gall, or in any other way, except from Mr. Muser's house, in 1887?" (Rec. 53, fol. 77.)

The defendant's objection to this was that witness, being Arnold, Constable & Co.'s buyer, had no relation with and [therefore] *could* know nothing of the business of Muser Brothers. The Court sustained *the* objection, and plaintiffs counsel duly excepted. *(Ibid.)* The exclusion of this question is assigned as error.

XXIII. The same expert (Rec. 52) witness was asked by plaintiffs;—

Q. "For what services were commission-houses in St. Gall paid a commission?" (Rec. 53, fol. 77.)

Objected to as *immaterial;* excluded for lack of competency on the part of the witness to state "what commission-houses in St. Gall actually did." *(Id.* fol. 78.*)*

Exception allowed plaintiffs *(Ibid.)* who now assign the excluding of this question for error.

XXIV. The same expert witness (Mr. Maloy) had testified, without objection, that finished cotton embroideries, practically and ordinarily, were not obtainable, in 1887, at St. Gall, in any other way than from manufacturers, and from commission-houses upon orders that were given them, to be placed with and executed by manufacturers. (Rec. 53, fol. 77.) The plaintiffs then asked the witness this question;—

Q. "When goods are obtained in the manner you have just stated, what commissions did you pay, and what is the usual commission, at St. Gall, for such services?" (Rec. 54 top.)

The defendant objected to this question as *immaterial.* The objection was sustained on the ground that it had not been shown that what St. Gall commission-

houses did was the same thing that plaintiffs' house there did, and which is represented by the difference in dispute here *(Ibid.)* and the question was excluded. Its exclusion the plaintiffs now assign for error.

XXV. Plaintiffs then asked same witness;—

Q. "Do you know of your own knowledge what the commission-houses in St. Gall actually did, in 1887, for their commission?

Objected to as immaterial, and because no proper foundation had been laid for the question. Excluded, upon the latter ground only. (Rec. 54.) This is assigned for error.

XXVI. The witness was then allowed to state that, as to embroideries ordered by him from St. Gall commission-houses, in 1887, they added 3% to the cost of the completed goods. Thereupon he was asked;—

Q. "What was that commission added for?" (Rec. 54, fol. 78.)

Objected to as immaterial, and for lack of qualification in the witness to answer. Excluded, *(Ib.)* and the exclusion is assigned for error.

XXVII. Then this witness was asked;—

Q. "Was or was not that commission a charge for procuring cloth, embroidering it, finishing it and superintending?" (Rec. 54, fol. 79.)

The same objection and ruling was made to this as to the preceding question. *(Ib.)* Its exclusion is assigned as error.

XXVIII. Jacob Hirsh, who had acted, as to one of Muser Bros.' importations in suit, as merchant appraiser (Rec. 29 to 32; 57 to 60) stated that he recollected what took place upon that examination and hearing, and *could state the grounds* upon which the general appraiser made the addition to the invoice that he did make (Rec. 54, 55.) He was then asked;

Q. "Will you state them?" *(Id.* 55 top.)

"Objected to as *immaterial*, and that the proceedings of the appraisers are final, and *cannot be reviewed* by this court." *(Ibid.)*

The question was *not* excluded upon either of these grounds, but "as calling for more than a statement of facts. It calls for *inferences* and *conclusions*." Plaintiffs' counsel duly excepted *(Ib.)*

The excluding of this question the plaintiffs now assign as error.

XXIX. This inquiry was then put by plaintiffs to the same witness;—

Q. "What, if anything, did he [Gen. Appr. Downes] say to you, on that occasion, with respect to concurring in his report; and as to the reasons for making the addition which he made to the invoiced value?" (Rec. 55, fol. 80.)

Objected to as *immaterial* and *incompetent; this* objection sustained; plaintiffs excepted *(Ibid.)* and now assign the exclusion of this question as error.

XXX. Mr. Hirsch was then asked;—

Q. "At the time that the general appraiser (Mr. Downes) signed this report, did he make any statement to you explanatory of his reasons for doing so?" *(Ibid.)*

Objected to *only* as *immaterial*." *(Ib.)* The Court sustained *the* objection, unless plaintiffs' counsel would state they proposed to show 'some FRAUD with regard to the appraiser.' It being stated that *error*, and not *fraud*, was intended to be shown, the Court excluded the question; which exclusion is now assigned for error.

XXXI. This witness was next asked;—

Q. "Do you know, or not, whether upon that reappraisement the local appraiser, or any of the examiners were present?" (Rec. 55, fol. 81.)

Objected to as immaterial. The Court said the question would be excluded "unless the statute *requires* the presence of the local appraisers, or of the examiners."

(Ib.) It was excluded, plaintiffs excepted *(Ib.)* and now assign this exclusion as error.

XXXII. The following question was then put to Mr. Hirsch ;—

Q. " As matter of *fact*, if you *know*, state whether any amount was added to the invoice valuation, by yourself or by the general appraiser as 'manufacturer's profit'? " (Rec. 55, fol. 81.)

Defendant's counsel objected to the question as *immaterial*, and that THE RE-APPRAISEMENT SPEAKS FOR ITSELF AS TO WHAT WAS DONE. The Court sustained the LATTER objection, and plaintiffs' counsel duly excepted. *(Ibid.)*

The excluding of this question, plaintiffs now assign as error.

XXXIII. HENRY SCHOONMAKER, called by plaintiffs, for six or seven years and in 1885, an examiner of cotton embroideries in the U. S. appraiser's stores (Rec. 55, bottom) was present at the Manhattan hotel meeting in 1885 ; the object of which is stated to be " for the merchants to protest against the action of the appraisers in the mode they had adopted for appraising goods, for the past few months ; especially, against the appraising of goods by sight, or virtually guessing at the value of the goods, and adding a certain amount at the suggestion of the special agents, and other parties." " The course pursued by the appraisers up to a month or two prior to this meeting was similar to the one since pursued, I believe." (Rec. 56 top.)

Plaintiffs then asked the witness this question ;—

Q. " While you were examiner, were the lace and embroidery invoices passed upon the stitch value, and the cost of cloth, and of finishing, with the addition of ten per cent ? " *(Ibid.)*

Objected to as immaterial ; excluded upon that ground *(Ib.)* and plaintiffs assign such exclusion as error.

XXXIV. Statements of witnesses in the re-apprisement proceedings in which Mr. JACOB HIRSCH partici-

pated, as merchant appraiser, having been received in evidence (Rec. 57 to 60) that gentleman again took the stand, and was asked this question, by plaintiffs, after he had stated that the introduced papers were before him and the general appraiser upon that reappraisement (Rec. 61, fol. 88.) ;--

Q. " What examination did you make of the goods covered by these invoices ? " *(Ibid.)*

Objected to as immaterial, and that the protest did not claim the goods were not properly examined ; the court sustained the objection and excluded the question *(Ibid.)*—which the plaintiff now assign as error.

XXXV. To this question, put to the same witness by plaintiffs defendant objected as immaterial, and it was excluded ; *(Ibid.)*

Q. " Did the appraising board send for any of the assistant appraisers or for the assistant appraiser, who had passed this invoice in the local appraiser's office ? " *(Ibid.)*

Its exclusion is now assigned as error.

XXXVI. The same witness having stated that the assistant-appraiser, Mr. Kent, was dead, was asked by plaintiff ;—

Q. " Did he come before the appraisers' board, and make any statement as to the grounds upon which the local appraiser had advanced the invoice ? " *(Ibid.)*

Objected to, and excluded, as immaterial. *(Ibid.)* This was error.

XXXVII. Same witness, was asked by plaintiffs ;—

Q. " Was any other testimony considered by the board of appraisement than what is contained in this record, Exhibit 5 B " ? *(Ibid.)*

Objected to, and excluded, as immaterial. (Rec. 62 top.) This exclusion the plaintiffs now assign as error.

XXXVIII. This witness was then asked by plaintiff ;—

Q. "Please examine Exhibit 5 B and state, if you can, whether it contains a complete record of the proceedings upon the reappraisement of these goods?" (Rec. 62, fol. 89.)

Objected to, and excluded, as immaterial. *(Ibid.)* This ruling, duly excepted to, is assigned as error.

XXXIX. The papers showing that Mr. Hirsh did not concur with the general appraiser, the witness was asked; "Why did you decline to join with the general appraiser in his report?" Objected to, and excluded, as immaterial. *(Ib.)* This ruling is assigned as error.

XL. Then this witness was asked;— "What was the basis of your judgment on which you signed the report, Saying 'Entry sustained,' that entry having added three per cent. to the invoice?" *(Ibid.)* Upon objection, this question was excluded as immaterial. *(Ib.)*; which ruling is assigned as error.

XLI. Mr. Hirsh having stated that David Schoenfeld was called as a witness before the reappraising board of which Mr. H. was a member, was then asked;—

Q. "Did he testify upon that examination that 'the above prices, 35 centimes for ¼ and 28 centimes for ¼ are correct for stitching, and the price for the cloth must be added to make the cost. We add to our cost 10% for *manufacturer's profit. This we only do under compulsion.*' Was any statement made following that testimony, by the general appraiser, to the effect that that was the rule, and must be followed?" (Rec. 62, fols. 89, 90.)

Objected to, and excluded, as immaterial. *(Ibid.)* Plaintiffs excepted, and now assign this exclusion as error.

XLII. Edward E. Eames, who was the merchant appraiser in the reappraisement of some of the embroideries involved in this suit, called as a witness by the plaintiffs, testified that, in conjunction with the general appraiser, he made reports upon these invoices,

adding six per cent. (Rec. 92, fol. 134.) He was then asked ;—

Q. "To cover what? For what purpose, and on what grounds, did you make that addition of six per cent?" *(Ib.)*

Defendant's counsel objected to the question as *immaterial ;* which objection the court sustained, excluding the question. *(Ib.)* Plaintiffs, then excepting, now assign this ruling as error.

XLIII. This witness having stated that, in two of the cases in which ten per cent addition was made, Mr. Brower was the general appraiser, acting with Mr. Eames, and in the other Mr. Downes, this question was asked; *(Ib.)*

Q. "If either of them, at the time of signing the report, stated to you the grounds upon which they added the ten per cent, please state them?"

Objected to by defendant as *immaterial* and excluded upon that ground. *(Ibid.)* The plaintiffs then excepted to this ruling, and now assign it as error.

XLIV. A witness who had ascertained the expenses of Muser Brothers' establishment at St. Gall, and its percentage to the business done by them in 1887 was asked, "Will you please state it?"—which question was excluded as immaterial. (Rec. 93 top.) The rejection of this question is assigned as error.

XLV. He was then asked ;—"Can you state the total expenditures of the office of Muser Brothers in St. Gall for the year 1887?" *(Ibid.)* Also excluded as immaterial, and its exclusion now assigned as error.

XLVI. Having stated that he knew the salary of their designer, in 1887, he was asked; "What was it?" —which question was excluded as immaterial. (Rec. 93, fol. 136.) Its exclusion is assigned as error.

XLVII. Having said he knew the total amount of embroideries obtained by Muser Brothers' St. Gall office in 1887, he was asked, "What was it?" (Rec., 93 bottom.) Excluded as immaterial (Rec. 94 top) and its exclusion is assigned as error.

XLVIII. Having stated that he knew the rate at which the work done by Muser Brothers' office in St. Gall could be procured to be done, in 1887, by other houses there, the witness was asked, "Will you state what that was?" (Rec. 94 middle.) Question excluded as immaterial, and its exclusion is assigned as error.

XLIX. George V. Brower was the general appraiser sitting upon most of the reappraisements of the importations concerned in the present suit. Being called by plaintiffs as a witness, Mr. Brower was asked;—

Q. "In making your report in these several invoices, and in adding ten per cent to the invoice value, did you or not take into consideration, as a part of that ten per cent addition, any manufacturer's profit?" (Rec. 95, fol. 139.)

Defendant's counsel objected to the question as *immaterial.* The Court sustained the objection, and plaintiffs' counsel duly excepted *(Ibid.)* and now assign this ruling as error.

L. Mr. Brower was then asked this question by plaintiffs;—

Q. "Did you, in making that addition, ascertain the cost of the cloth, of the stitching, the bleaching, and finishing, and then add to that sum, as a part of the ten per cent, anything for CHARGES incurred in the purchase and preparation of said goods for shipment?" *(Ibid.)*

Defendant's counsel objected to the question as *immaterial.* The court sustained *the* objection, and

plaintiffs' counsel duly excepted *(Ibid)* and now assign this ruling as error.

LI. The same witness was then asked ;—

Q. "Upon what ground, and to cover what, did you add the ten per cent, or the sum that you did add, to the invoice?" *(Ibid.)*

Defendant's counsel objected to the question, *on the ground that the action of re-appraising board was final*, and *cannot be reviewed* in this action. The court sustained the objection, and plaintiffs' counsel duly excepted *(Ibid)* and now assign this ruling as error.

Statutes.

Revised Statutes, section 2902 makes it the duty of the appraisers of the United States, etc., by all reasonable ways and means, etc., to ascertain, estimate, and appraise the true and actual market-value and wholesale price; etc., of imported merchandise, at the time of exportation *(i. e.* day of shipment, § 2904*)* in the principal markets of the country whence it is imported into the United States.

By R. S., sec. 2907, in determining the *dutiable* value, there was to be added to this above-mentioned market-value "the cost of transportation, shipment and transshipment, with all the expenses included from the place of . . . manufacture . . to the vessel in which shipment is made to the United States; the value of the sack, box or covering of any kind in which such merchandise is contained; commission, etc., and brokerage, export duty, and all other *actual* or *usual* charges for putting up, preparing and packing for transportation or shipment; all charges of a general character incurred in the purchase of a general invoice shall be distributed *pro rata* among all parts of such invoice."

This section (2907) and sec. 2908 were *repealed* by the seventh section of the act of March 3, 1883, which further declared;—

"And hereafter *none* of the *charges* imposed by said sections *or any other provisions of existing law* shall be estimated in ascertaining the value of goods to be imported; *nor* shall the value of the usual and necessary, crates, boxes or covering, of any kind be estimated *as part of their value* in determining the amount of duties for which they are liable." (22 Stats. 523, § 7.)

The eighth section of this act of 1883 provides the forms of oaths required to be taken upon making entry of imports.

The ninth section thus prescribes the course to be pursued with regard to goods whose market-value could not be ascertained satisfactorily to the appraiser;—

"Sec. 9. If upon the appraisal of imported goods, wares and merchandise, it shall appear that the true and actual market value and wholesale price therof, as provided by law, cannot be ascertained to the satisfaction of the appraiser, whether because such goods, wares and merchandise be consigned for sale by the manufacturer abroad to his agent in the United States, or for any other reason, it shall then be lawful to appraise the same by ascertaining *the cost or value of the materials* composing such merchandise at the time and place of manufacture, together with *the expense of manufacturing, preparing*, and *putting up* said merchandise *for shipment*, and in no case shall the value of such goods, wares and merchandise be appraised at less than the total cost or value thus ascertained." (22 Stats. 525.)

POINTS.

I.

Preliminary.

A directed verdict for defendant can only be upheld, if the most favorable view of the facts, upon plaintiff's statement of them, and the inferences most favorable to him that a jury could draw from the facts, would not support a verdict in his favor.

In other words, a citizen is not to be deprived of a jury trial in any case in which it would be legally permissible for the jury, upon all the facts, and the inferences they might draw therefrom, to give him a verdict which he could lawfully retain.

Phenix v. Doster, 106 U. S. 32.
Randal v. Baltimore, 109 *Id.* 482.
Goodlette v. Louisville, 122 *Id.* 411.

II.

Statutory methods of ascertaining dutiable value.

The Revised Statutes, as amended by the act of March 3, 1883 (in force when our goods were imported) provide two methods for ascertaining the amount to which the rate of duty prescribed for the article is to be applied; one or the other of which methods is to be adopted, according to the particular character or circumstances of any given importation.

Section 2902, re-producing the sixteenth section of the act of August 30, 1842, c. 270 (5 Stats. 563) establishes the first method, which is still that applied to

the great bulk of dutied importations into this country; to wit, the appraisal "of the true and actual *market-value* and wholesale price of the merchandise, at the time of exportation, *in the principal markets of the country* whence the same has been imported into the United States."

Section 2906 requires the *collector* to cause this market value to be appraised; "and such appraised value shall be considered the value upon which duty shall be assessed."

The act of 1842 and R. S. sec. 2907 qualified this last sentence by requiring the addition of certain expenses and *commissions* to the entered or appraised value, to make dutiable value;—but this requirement was repealed by the act of 1883. So the statute read, in 1887, as above quoted.

The ninth section of the act of 1883 (22 Stats. 535; *ante* p. 63) provided the second method for determining dutiable value in those exceptional instances in which no market-value could be ascertained satisfactorily to the appraiser.

It will be seen that *it substituted something different from market-value, in lieu of it.*

To show the pertinency of some of the evidence offered by us, which was excluded, it becomes necessary to invite attention to the *modus procedendi* of both these methods.

We will first take up the old, long-established, course of procedure;—that to ascertain market-value.

III.

Ascertainment of market-value.

The circular of the Treasury Department, # 9714, issued November 18, 1889, prescribes to the Customs Officers "a practical and sufficient rule" for their general guidance "in the ascertainment and determination of dutiable values":—

"FIRST. That the dutiable value—or, in other words the determinate value—of any merchandise upon which the law imposes an *ad valorem* rate of duty is legally placed upon and derived from three separate valuations of such merchandise, designated the 'invoice value' the 'entered value' and the 'appraised value', and made respectively by the exporter, the importer, and the Government appraiser."

The second paragraph of the Circular notices that, while the appraisement must be of the goods *per se* (Oberteuffer) the duty cannot be levied upon any sum less than the invoice or entered value, but must be computed upon that (of these three values) which is highest.

(3d.) The invoice value must be determined from the specifications of that document.

(4th.) The entered value must be either invoice value, or that plus the importer's additions.

(5th.) The appraised value of goods *per se* is their "true and actual market value and wholesale price" etc., to be ascertained according to R. S. § 2902. "This value can be determined only by persons duly authorized and acting as appraisers; and, so determined, must be, *by the Collector*, compared with the invoice and entered values in assessing the duty.

Specific duties have been the exception in our tariff legislation, especially during the latter half of our history; and, where imposed, have chiefly been placed upon crude materials.

Manufactured articles—the products of the loom and the spindle—have (of late years, at least) been, almost universally subjected to *ad valorem* duties.

The first step, in legislating such duties, is to establish the *method* of determining value; to lay down principles to govern the action of those whose function it shall be to ascertain the valuation upon which the statutory valuation is to be assessed.

This ascertainment is the work of the government *appraisers*, who, in this particular, resemble a jury or a "legislative referee". (4 How., 327; 10 *Id.*, 240) But this function, like that of a jury or referee, is to be exercised in subordination to fixed rules of law.

A result legally correct can only be reached through the application of correct legal principles.

Only those principles are legally correct, and to be observed, in this matter, which Congress has prescribed as the rule of action.

Prior to 1823, in the case of all undamaged goods, the entries of which were accompanied by *invoices*, the *dutiable* value was ascertained from the *cost, as per invoice*, with the addition of certain charges, and statutory percentages.

The Act of March 1st, 1823, c. 21, § 5, designates the appraised value to be ascertained, to which are added charges and percentage. (3 Stats. 732.)

Section 16 of this Act (*Id.* 735) furnishes two appraisers at New York, and at several other ports.

Section 18 allows a dissatisfied importer to employ two merchant appraisers, at his own expense, who, with the government appraisers, were to reappraise the goods, or to report to the collector their inability to agree, whereon an appeal was given to the Secretary of the Treasury. (3 Stats. 736.)

The Act of May 28, 1830, § 2 (4 Stats. 409) authorized the Secretary of the Treasury to appoint four *assistant* Appraisers for New York "to be employed in appraising goods in such manner as shall be directed

by the Secretary." Their appraisement was to be reported to and corrected by the principal appraisers, who then reported it to the Collector, who could order a reappraisement (if he deemed the original too *low*) either by the principal appraisers or by *three* merchants.

The act of March 3, 1851, c. 38, § 3 (9 Stats. 630) now R. S. Sec. 2608, authorized the presidential appointment of four appraisers, who have come to be known as "*general* appraisers"; one of whom was to sit with the merchant selected by the Collector to hear appeals from the appraiser's valuation, theretofore determined, under the act of 1842, c. 270, § 17 by *two* merchants. (R. S. § 2608 omits this express reference to the Act of 1842.)

This act of June 30, 1842, c. 270, § 16 (5 Stats. 563) first fixed the principal *foreign* market as the *place*,— and the act of 1851, c. 38, § 1, the period of exportation as the *time* of valuation; the act of 1842 stating the methods of procedure in making appraisals, substantially as have ever since been required. R. S. § 2902 etc.

The act of July 27, 1866, c. 284, § 1, (14 Stats. 302) directed "in lieu of the Appraisers now authorized by law" at New York the appointment of one appraiser to supervise, etc., the examination &c. of *such* goods, etc. as *the Collector may direct.*

Its second Section authorizes ten *assistant* appraisers at New York, in lieu of those theretofore authorized; to be employed in appraising goods *according to law*, under the direction of *the appraiser*, their report being subject to correction and revising by *him*, and (when approved) transmitted by him to the Collector, etc.

[R. S. Sec. 2536 "Second" *seems* to have made these Presidential appointments, instead of by the Secretary, as under this Act of 1866.]

The fourth section of this act of 1866 (now R. S. 2538) authorized the *Secretary*, upon the Appraiser's nomination, to appoint *examiners* at New York "to aid each of the *Assistant* Appraisers in the examination, inspection and appraisement of merchandise.

R. S., Sec. 2614, requires oath of New York Appraiser "faithfully to *direct* and *supervise* the examination, inspection and appraisement, according to law, of *such* merchandise as the *Collector* may direct, etc.; and that all other appraisers (and merchants so acting) to swear diligently and faithfully to examine and inspect such goods, etc., as the Collector may direct, and report to *him* its value, truly.

By the next Section (2615) *Assistant* Appraisers swear diligently and faithfully to examine and inspect such goods as the *Appraiser* may direct, and to report to *him* its value.

Dutiable goods imported into New York, then, are subject to the scrutiny of the examiners, aiding the *assistant* Appraisers. The latter report their valuation to the New York Appraiser. He examines into the matter, and reports his own appraisement to the Collector. If this officer approve it, he assesses duty accordingly, unless a reappraisement is demanded by the importer, under R. S. Sec. 2930, which reproduces the before-mentioned acts of August 30, 1842, c. 270, §17 (5 Stats. 564) and March 3, 1851, c. 38, §3, (9 Stats. 630).

When duties are to be assessed, the *invoice* is the first and primary document to be scrutinized in connection therewith, in the ascertainment of *value*.

"Every direction given to the Collector supposes and aequires him to have the invoice before him. He cannot take a step in performance of the duties imposed upon him, he cannot comply with one of the requisitions of the act, without it."

U. S. v. 28 Pckgs. Gilpin, 323.
See R. S. Secs. 2837–9; 2852 to 2860; 2862–5; 2899 to 2902; 2921; 2926; 2939.
U. S. v. 67 Pckgs. 17 How. *92.

These, and many other, provisions of law vindicate Mr. Webster's statement that, in the absence of suspicion of fraud, "the invoice is the regular proof of value". 3 Wks. 233.

Tappan v. U. S. 2 Mason, 392, 402 top.

It is so in causes between citizens.

Graham v. Pa. Ins. Co., 2 Wash. 124.

Its value can be *added* to, by the importer, upon entry; but duty can never be assessed upon any *lower* value than it states. R. S. Sec. 2900. Kimball v. Collector, 10 Wall. 445.

This *entered* value—either that given in the original invoice, or that plus the importer's additions—*must* be the basis of the assessment of duty, unless some other valuation is arrived at, *in the manner prescribed* by law. A value determined in any other method than *just* that pointed out by the Statute, will not displace the value declared upon the entry, for the purpose of computing duties.

The *modus procedendi*, from the time goods arrive till duties are paid is detailed by CLIFFORD, J., in Kimball v. Collector, 10 Wall. 445 *et seq.*

Having the invoices before him, the Collector designates one package of each invoice, and not less than one package of every ten embraced in the entry, to go to the public store, there "to be opened, examined and appraised", for the purpose of comparing the estimate of value thus arrived at with that stated upon the entry. (R. S. § 2901).

To this end,

"Sec. 2902. It shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, . . . by all *reasonable* ways and means in his or their power, to ascertain, estimate and appraise the true and actual market value, and *wholesale* price (any invoice and

affidavit to the contrary notwithstanding) of the merchandise, at the *time* of exportation, and in the principal markets of the country whence the same has been imported into the United States, and the number of such yards, parcels, or quantities, and such actual market value or wholesale price of every of them, as the case may require." . . . .

Sec. 2904. Day of shipment, as per bill of lading is the date.

Sec. 2905. Country of production is the place of valuation, where not directly imported therefrom.

"Sec. 2906. When an *ad valorem* rate of duty is imposed on any imported merchandise, or when the duty imposed shall be regulated by, or directed to be estimated or based upon, the value of the square yard, or of any specified quantity or parcel of such merchandise, the *Collector* . . . shall cause the actual market value, or wholesale price thereof, at the period of the exportation to the United States, in the principal markets of the country from which the same has been imported, to be appraised; and such appraised value shall be considered the value upon which duty shall be assessed."

The Collector is to direct the taking, and the Appraisers are to take, the market value or wholesale price of the goods, at the time and place indicated. They have no right to do anything more, less than, or different from, this. If they do, their action is illegal and void.

The market value, or wholesale price, to be by them ascertained, has been fully defined, in the case of

Cliquot's Champagne, 3 Wall. 114, 125, 142.

"The market value of the goods is *the price at which the owner of the goods holds them for sale;* the *price* at which they are freely offered in the market to *all the world;* such prices as dealers in the goods are willing to receive, and purchasers are made to pay, when the goods are bought and sold *in the ordinary course* of trade" (3 Wall. 125.)

If the appraisers have not *examined*, and appraised *according to law*, their appraisement is invalid; and, upon due protest against it and appeal to the Secretary, the importer can recover any excess of duty above invoice value (or, rather, *entered* value) assessed according to such illegal appraisal, and *without* calling for a reappraisement.

Burgess v. Converse, 2 Curtis, 220.

Affirmed as "Greeley's Admr. v. Converse, 18 Howd., 415, where the appraisal or reappraisement is said to be final only "*provided* it is made in pursuance of law." 18 How. 415, *bottom*.

Though, in that case, as in the one at bar (Rec. 55, fol. 81) *fraud* was not claimed by importer, yet *illegality* (or *irregularity* of proceeding) was, (as it is here) in that the appraisers and reappraisers did not *examine* the goods: here, we say they included items expressly excluded by law. The Court say, in that case;—

"We are, therefore, of the opinion that the importer was *not* precluded by their return from disputing the sufficiency or *accuracy* of their assessment." 18 How. 416.

Badger v. Cusimano, 130 U. S. 39.

To do this, however, he must protest against the assessment; and appeal. *Ibid.*

U. S. v. Earnshaw, 12 F. R. 283, citing Chance v. U. S. 9 *Id.* 282 and other cases.

Westray v. U. S. 18 Wall. 322

It will be seen that the thing which the statute requires to be established, wherever these provisions are applicable, is the current, wholesale, price of the goods, at a specified time and place, entirely regardless of the cost of producing them, or of the elements which go to make up such cost.

IV.

Second method. Cost of production. Act of 1883, § 9.

The ninth section, act of March 3, 1883 *(ante*, p. 63*)* will be seen to require the appraiser to inquire, *first*, whether or not there can be assigned to the goods to be appraised any market value satisfactory to him;—and *only* in the event of his inability to ascertain market value satisfactorily does it become lawful for him to appraise the articles in the secondary method prescribed for that contingency, viz.; by ascertaining the market value of the *materials* composing such merchandise, at the time and place of manufacture, together with the *expense of manufacturing*, preparing and putting up such merchandise for shipment. (22 stats., 525; *ante*, p. 63.)

These two methods of inquiry are directed toward different ends, to be attained by means appropriate to each, differing from each other.

With the ascertainment of market-value, cost of production has nothing to do; scarcity, or unusual demand, may raise the price far above what it cost to make the article;—over-production, or a sluggish demand, may reduce "the wholesale price" far below the cost of manufacture; yet it is this price, actually current at the *time of exportation*, that furnishes the basis for computing the duty.

If the inquiry as to market-value does not lead to a conclusion satisfactory to the appraiser, he abandons it—*because* it is unsatisfactory—and has nothing more to do with it. Then he directs his efforts toward ascertaining a different value, at a different time, in a different place. He is to seek the value, not of the thing, but of the *materials* out of which it is made; not at the time of exportation, but when made, perhaps months before its export; not in the principal markets,

but in the place of manufacture, perhaps far distant from those markets.

In short, the distinction between these methods is this;—the first asks, 'for what price can anybody buy these goods in this market?' the second asks 'what did it actuallly cost to make them, taking as the cost of materials *their* market-value, at the time and place of manufacture?

Incidentally we may note that the question suggests itself, what are "the materials composing the merchandise?" In our case, the product of nature, the textile, was cotton; but while this was the material of the thread, the latter was the material of the cloth, and the cloth in the grey was the material of our embroideries; which value should have been taken.

Seeberger v. Hardy, 150 U. S. 420.

Whichever method of appraisement was pursued, *this* was the end aimed at, namely—that the importer should pay duty upon precisely what the goods, *per se* were worth *to him* abroad; on the price paid there, if he were a purchaser, and if the market value were ascertained, and exactly equalled the price he paid; on what it cost *him* to make them there, if he were the manufacturer, and if no market-value were satisfactorily ascertainable. If he bought them above that market, yet they were worth to him there, on the day of exportation, what they would there sell for on that day; if bought below the market, they were still worth the amount of money into which they could be, then and there, turned. He did not have to pay duty upon any charges. Nor did he have to allow anything for the profit he might *expect to realize*, whenever they were sold in the United States.

Precisely the same, if he made the goods abroad, instead of buying them there. Then duty became payable upon the cost of making them there; exclusive of any profit he might *expect to realize* whenever they were sold in the United States. In either case (of a

purchaser or of a manufacturer) there *could* be no real profit, until he had disposed of the goods; and Congress did not lay any duty upon a mere contingent expectancy!

We may recur again to this topic, in another connection.

V.

Entitled to show which method was adopted;—and that there was illegality in its application.

An *illegal* appraisement is void, and "insufficient to displace the value declared upon the entry," (20 How. 576 top) irrespective of any question of *fraud* in making the appraisal.

Oelbermann, v. Merritt, 123 U. S. 356.
Badger v. Cusimano, 130 Id. 40.
Robertson v. Frank, 132 Id. 17.

Otherwise, statutory restrictions upon the power of appraisers acting honestly would only impose a moral obligation to respect them; whereas, as this Court long ago expressed it, they are "*the conditions upon which the validity of their assessment depends.*"

Greeley v. Burgess, 18 How. 416.

In the Frank case, it was said;—

"if the appraiser proceed upon *a wrong principle*, contrary to law, AND THIS BE MADE TO APPEAR, his appraisement is not unimpeachable."

Robertson v. Frank, 132 U. S. 24.

In the nature of things, we must have the right to prove what principle was adopted, for the purpose of demonstrating it to be wrong. If the statute prescribes

one rule for ordinary cases, and a different method for exceptional ones, every dictate of justice establishes our right to make it appear whether the usual or exceptional course was attempted to be pursued.

We do not question the appraiser's authority to determine *conclusively* whether or not a market-value satisfactory to *him* can be ascertained; and, if not, that he may decide *conclusively* that the method of appraisement prescribed in section nine must be applied to our importations; but we do claim that we are entitled to know the fact of his reaching such a conclusion, and adopting this method; and to establish that fact by evidence, to be submitted to the Court and jury. Yet *this* right was denied us.

The evidence, documentary and other, introduced by us, and before the court and jury, at least *tended* to show no satisfactory market value could be ascribed to our goods; that the appraisers so found; and that they therefore *undertook* to apply the method of appraisal provided by section nine for such cases to these goods.

Record, pp. 41; 42, fol. 57; 43, top; 47 and 48; 52; 53, fol. 77; 58, bottom; 59, bottom; 60, bottom; 62 and 93; 78, fol. 109, and *passim*.

While the proceedings were *in fieri*, the appraisers declined to commit themselves to the method of valuation ultimately to adopted; the responses to Mr. Curie's inquiries upon this point being ambiguous as those of the Delphic oracle. (Rec. 77 and 78.)

Without criticising here this reticence, at that stage of the procedure, we claim we were entitled to prove at the trial which method they attempted to follow—and failed in the attempt. This we proposed to do, by the General Appraiser, the merchant appraisers, and by other testimony; but the Court refused to admit the evidence; which exclusion we assign as error. (Rec. 41, fol. 55; 55, fols. 80 and 81; 56;

61–62, fols. 88–89 and 90; 92, fol. 134; and 95, fol. 139.)

We cannot reconcile the theory announced on page 48, fol. 68, as the ground for admitting the evidence there offered by the defendant with the exclusion of the testimony we proposed to introduce. The admission *(ubi sup.)* was "upon the theory that, it being a matter to be determined by the appraiser *what the expense of manufacturing is*, the statements of those who are in the trade is competent," etc. *(Ibid.)*

The appraiser is *not* to determine the "matter" mentioned, unless and until he has first determined that a market value cannot be assigned to the goods, satisfactorily to him.

The Court, after admitting testimony upon the theoretical assumption that the appraiser had arrived at this conclusion, as to a satisfactory market-value, excludes our direct proof of the assumed fact!

The exclusion of our testimony is contrary to all the rulings of this Court, and of the lower courts, as to the impeachment of appraisements for *illegality*. (130 U. S. 40.)

It is impossible to prove an appraisal to have been unlawfully conducted, without proof what its conduct was; and this may be shown *aliunde* its record.

From the summary we have given *(ante* pp. 62, 63*)* the Court will note that the appraisement is to be "according to law" of such merchandise as the *Collector* may direct. (R. S. § 2614.) *The collector* causes the statutory appraisal to be made *(Id.* § 2906*)* by *his* designation of 'such merchandise' upon the invoice. *(Id.* §§ 2901, 2939.*)* The appraiser supervises it *(Id.* § 2614*)*; the assistant appraisers make it, primarily, under *his* direction *(Id.* § 2615*)*; and the examiners, appointed at the appraisers suggestion *(Id.* §§ 2538, 2940*)* aid in the examination, etc.

"Sec. 2929. The principal appraisers shall revise and correct the report of the assistant appraisers as they may judge proper, and report *to the collector* their

decision thereon." . . "He may order a re-appraisement" [or the importer call for one, § 2930] "and may cause the duties to be charged accordingly."

In short, *the collector* (in this case, Mr. Magone) controls the whole procedure of appraisement and re-appraisement. If either of the subordinates do aught therein, which the importer deems illegal or improper, he complains of this to the collector, that it may be corrected. We protested to him (Rec. 38, fol. 50) "*First*," against the adoption of a value including "commissions and charges"; "Second" *(Ib.)* that the appraising officers and collector included in the value certain *specified* "charges; "*Fifth*" (Rec. 39, fol. 51) that the re-appraising officers committed the same error of law; "*Seventh*," *(Ib.)* That the general appraiser wrongly treated us as manufacturers, and added ten per cent. to cover profit, commission or charges; "*Eighth*" *(Id.* fol. 52*)* that, if our goods were dutiable at the cost of manufacture, this ten per cent. addition was illegal;—and the other clauses elaborate our objections. We must, necessarily have had the right to prove *to the collector* the fact of the illegality of which we complained; we must have been entitled to show this *to the Secretary* upon our appeal, the collector disregarding our protest; and, when, upon the dismissal of our appeal, we seek in the courts our remedy against illegal exactions, we must have the right to prove the fact of such illegality, without being confined to an explicit avowal of it by those guilty of it.

As Judge CURTIS expresses this idea, it is only an appraisal that is in conformity with law that is final. (2 Curtis, 219.) Hence, it *must* be allowable to show that it did not conform to law, and wherein it failed to do so. To say the appraisers *should* obey the law, but that the aggrieved protestant cannot prove they did *not*, would leave the citizen at the mercy of a customs-officer's vicious construction. "Discretion in the custom-house officer should be limited as strictly as

possible. It has been said, with much truth, 'Where law ends, tyranny begins.'" (104 U. S. 702 top.) "It is the laws which are to govern, not their opinions of them; and importers, in cases of doubt, are entitled to have their right settled by the judicial exposition of those laws, rather than by the views of the department. And though, as between the custom-house officers and the department, the latter must by law control the course of proceeding, yet, as between them and the importer, it is well settled that the *legality* of *all* their doings may be revised in the judicial tribunals." (10 How. 234.)

They can be there revised only by there admitting proof of all the appraisers did, in the particulars of which we complain; even though their documents are silent upon the subject, or state that which can be otherwise shown to be untrue.

In the case last above quoted from, the appraisers advanced the market-value of iron more than ten per cent above the invoice of it;—*held*, that it could be shown they fixed its value on the 24th day of February, whereas it should have been ascertained as of the 24th of January; also that one of the appraisers did not examine the iron (though of course their return would not state that fact) so their decision was not made "in conformity with law."

Greeley v. Thompson, 10 How. 234–5.

In the Burgess case, the only questions open to the importers, under their protest, were "*those which relate to the conduct of the appraisers*, in making the appraisements." (2 Curtis, 218.) It was offered to be proved that the appraisers did not see the goods, only some long-drawn, dried, samples which did not indicate the true character of the sugar, when entered. Held, of no consequence, because there had been a re-appraisement; but proof of the same facts as to those re-appraising the sugar vitiated the proceedings.

Manifestly, these were not facts appearing upon the face of the papers, but were proved *aliunde*.

Burgess v. Converse, 2 Curt. 216.
Greeley v. Burgess, 18 How. 415.

In Oelbermann v. Merritt, the merchant-appraiser reported he had examined the velvets in question and stated the value he affixed to them. (22 Blatch. 42; 19 F. R. 408.) Judges SHIPMAN and COXE held he could not, at the trial, be allowed to stultify himself, or show he had disregarded his oath as appraiser, by saying he did *not* examine them; but this court held to the contrary, that *he* was a competent witness to prove he made no *sufficient* and legal examination, and reversed the judgment. There was no claim that the statement in the return concluded the *importer;* only that he could not refute it by the man who made it; this court declared, however, not only that its falsity could be shown, but that it could be shown by him.

Oelbermann v. Merritt, 123 U. S. 356.
Mustin v. Cadwallader, *Ibid.* 369.
Badger v. Cusimano, 130 *Id.* 39.

In this last case, the appraisers' and re-appraisers' report *professed* to state "actual market value"; but it was shown *aliunde* that what was really done was to deduct from the invoice the (correct) charges and add the deduction to value.

In Auffmordt v. Hedden, it is declared that "*the proper course* was for the witness TO GIVE THE PARTICULARS OF THE METHOD PURSUED," etc. (137 U. S. 321 middle.)

Hedden v. Iselin, 142 U. S. 681 bottom.

VI.

If market-value was appraised, Sec. 7, Act of 1883, was violated by addition of non-dutiable items.

Whichever method the appraisers assumed to adopt with reference to our goods, it was not applied "according to law"; but we were entitled to know and show upon which horn of a dilemma the collector was impaled.

Assume first that they sought to appraise the market-value of these embroideries, as purchased goods.

The importers' addition of 3% was compulsory, to avoid a penalty, and *the same compulsion* demanded that it should *profess* to be "to make market-value", without specification of "charges", "commissions" or "manufacturer's profit", *because* (as the chief entry-clerk at the Custom-House swore) "section seven prohibited it, as we considered it". (Rec. 41 top.)

This section, however, just as explicitly, prohibited the including of these items in the *estimate* of value as it did their addition to market-value. (22 Stats. 523.)

The form we were compelled to adopt was prescribed by the customs-officers avowedly to accomplish by indirection that which the law directly forbade. We had a right to show the illegality of the course we were constrained to take.

Robertson v. Frank, 132 U. S. 17.

In the cartons case, the appraisers' return showed the addition to be "to make market-value, in marketable condition" or "to make market-value as noted"; but the importers proved that such 'market-value' illegally included charges.

Oberteuffer v. Robertson, 116 *Id.* 501.

The seventh section of the act of 1883 (22 Stats. 523) having abolished all charges theretofore dutiable under

R. S. secs. 2907–8, "*or* any other provisions of existing law," we had a right to ask, and it was manifest error to exclude (in view of the admitted testimony) these questions, put to the general appraiser;—

Q. "Did you, in making that addition, ascertain the cost of the cloth, of the stitching, the bleaching, and finishing, and then add to that sum, as part of the ten per cent, anything for CHARGES incurred in the purchase and preparation of said goods for shipment?"

Q. "Upon what ground, and to cover what, did you add the ten per cent, or the sum you did add, to the invoice?" (Rec. 95, fol. 139.)

Robertson v. Frank, 132 U. S. 26, citing Oberteuffer, 116 *Id.* 499, and Badger v. Cusimano 130 *Id.* 39.

Upon a preceding page of the Robertson case, it is said that the general rule, as to the conclusiveness of a statutory appraisal [*i. e.* so far as it is an opinion, or judgment, as to the true market-value *per se*] "is subject to the qualification that if the appraiser proceed upon *a wrong principle*, contrary to law, and this be made to appear, his appraisement is not unimpeachable." (132 U. S. 24.)

We protested he did proceed 'upon a wrong principle,' which the collector accepted and acted upon, and we proposed to make the fact clearly appear by the statements which these excluded questions, truly answered, would elicit.

The *amount* to which the forty per cent *ad valorem* rate was applied, was ascertained (as we proposed to show) not by an *appraisal* of value, but by an *addition* of 'charges.' (116 U. S. 499.)

Reiss v. Redfield, 4 Blatc. 382, § 3.
Armstrong v. Hoyt, 1 Fed. Cas., 1142.

VII.

If cost or value under § 9, act of 1883, was sought, non-enumerated (hence, non-dutiable) items were illegally included.

"Market value," as hereinbefore noted, has a defined, well-understood meaning, as the term is used in our tariff legislation (3 Wall. 125); the word 'actual' emphasizing the idea that it must be real, demonstrated by *bona-fide* sales, at a genuine 'wholesale price'—and not hypothetical, or ideal. (Sherry, 2 Ben. 267; Dand v. Fiedler, 12 N. Y. 47 bottom.)

"A price established by public sales,"

Murray v. Stanton, 99 Mass. 348.

"The money value is the price at which they could be replaced for money in the market; and hence the inquiry is as to the market value of the goods, when they have a market-value."

Wehle v. Haviland, 69 N. Y. 450.

"Where a market-value for the article exists, the law has adopted that standard."

Dana v. Fiedler, 12 N. Y. 48.
Orchard v. Simpson, 2 C. B. (N. S.) 300.

The act of 1883, sec. 9, is a recognition of the necessity, that, when there is no market-value, "then some other criterion of value must be adopted."

Atchison v. Stanford, 12 Kans. 380.
Murray v. Stanton, 99 Mass. 348–9.

That section provides, as the alternative value, cost of materials plus *specified* expenses of manufacture, etc. (22 Stats. 525; *ante*, p. 63).

The difference, between the market-value and cost of the particular article, is noticed in the above-cited English case. (2 C. B., N. S. * 304.)

In his little book "On the Economy of Machinery and Manufactures" (p. 101) Prof. Babbage observes; "(§ 134) The money price of an article, at any *given* period [*ex. gr.* date of exportation], is usually stated to depend upon the proportion between the supply and the demand. The *average* price of the same article, during a long period, is said to depend, ultimately, on the power of producing and selling it with the ordinary profits of capital." But the statutory method, where a satisfactory market-value cannot be ascertained, has nothing to do with the foregoing definitions; and the collector's mistake was in incorporating into the dutiable value this element of *average* price, with which his inquiry, legitimately, should have naught to do.

If dissatisfied with the results of his efforts to ascertain market-value, the law explicitly dictates to the appraiser what computation he shall then proceed to make.

He is then to ascertain (1st) "the cost or value *of the materials*," at the indicated time and place; — into which, manifestly, the future profits which *may* accrue upon the completed article cannot enter; (2d) "the *expense (a)* "of manufacturing"; *(b)* "preparing" and *(c)* "putting up" such merchandise "for *shipment.*" (22 Stats. 525, § 9; *ante*, p. 63.) Into none of these does the anticipated 'profit' upon the future sale of "such merchandise" enter.

To the cost or value of components, only *certain* expenses are to be added. 'Expense' is the very antithesis of 'profits.' Expense is the *disbursing* of money; here, for *specified* items. Profits can only result from the sale of the article; until it is sold, they are conjectural only; until then, it is problematical upon which side of the profit-and-loss account an entry is to be made. *Anticipated* profits is "the poor man's wealth." Profit cannot reside in either of the enumerated items, because its existence can *only* be determined by a sale.

Yet, it is clearly proven that the only advance made upon the entered value of our goods was to cover this hypothetical "*manufacturer's* profit." (Rec. pp. 41–3; 46, par. 2nd; 47, fol. 65; 58 bottom; 59 bottom; 60 bottom; 72 middle; 75, end of fol. 105; 78, fol. 109; 83, fol. 117.)

The "materials" of our goods were the cloth and the embroidering.

There was proof from the appraising officers, that "the cost or value" of these "materials" was correctly stated in the invoice. This item passed, unchallenged and unchanged, the scrutiny of every appraisal and reappraisement. (Rec. 41, bottom; 42, near top; 43, near top; bottoms of pp. 58, 59 and 60; 64 to 78.)

The examiner at the appraiser's store testified;—

"No question was made that the cost of the cloth and the number of stitches stated in the invoices was correctly stated. I heard no complaint that the cost of the cloth and the cost of the stitching was not correctly stated in the invoice." (Rec. 41, bottom.)

Mr. Muser said, without contradiction;—"The correctness of the invoices themselves was not questioned." (Rec. 42, fol. 56.) He added;—

"I told the appraisers that we had an office in St. Gall to which we sent our orders, and they employed a designer who draws the patterns, and the patterns are sent over here for selection, or my buyer, when he goes to Europe, selects suitable patterns from those prepared for him. Then a contract is made with manufacturers and owners of machines to embroider those patterns for so much per one hundred stitches, including the thread or yarn used. When the goods are embroidered they are delivered to our office in the gray, and are then delivered by our office to a finisher whose business it is to bleach them, and after they are bleached they are returned to the office; they are then cut up into suitable lengths, ticketed, prepared for shipment, packed in cartons, the cartons packed in wooden boxes and shipped to this country and invoiced. This is what I told them there on the reappraisement. *The expenses connected with all these different manipulations are all*

contained in the invoices, and they form the basis of the cost at which the goods are figured in our invoices, and sworn to before the consul at St. Gall as our cost. I told them all this. Then I produced several witnesses to substantiate my statement, and after the general appraiser and the merchant appraiser discussed the matter and the general appraiser said that *we were manufacturers* and that it was necessary to *add the profit that a manufacturer* WOULD *make* in order to make market value, and he thought that that ought to be ten per cent.

Defendant's counsel:

Q. Did you hear him say this?

A. I repeatedly heard him say that." (Rec. 42).

We have above (*ante*, p. 83) cited several decisions of state courts to show that our tariffs have adopted the ordinary legal meaning of the term 'market-value'; and, that the act of 1883, § 9, merely provides (as does the law, as construed by these state decisions) for the contingency of there being none.

We wish now to note that the courts, wherever 'market-value' (or any other value) is the subject of inquiry, repudiate the theory that "profits" can be considered any part of the value.

In actions for conversion or non-delivery, it is 'well settled' that "unearned and speculative profits will not be included as part of the damages." Wehle v. Haviland, 69 N. Y. 451.

Smith v. Condry, 1 How. 35.
Porter v. Wood, 3 Humph. 56.
Bergen v. N. O. 35 La. An. 523.

Whatever exceptional facts may sometimes permit a recovery of 'profits,' they are *never* taken as a part of 'market-value'; and there was no authority to include them in an ascertainment under act of 1883, sec. 9.

A 'manufacturer's profit' is just like a merchant's profit—not his until he gets it. It does not exist unless the maker or holder has sold the goods for more than they cost him. Until this happens, they are contingent and speculative; and, therefore, excluded from

"market-value," whether this be sought for as basis of damages or the assessment of duty. The reason is precisely the same in all cases where they are excluded: and is thus assigned by Judge STORY;—

"The rule would be in the highest degree unfavorable to the interests of the community. The subject would be involved in utter uncertainty. The calculation would proceed upon contingencies, and would require a knowledge of foreign markets, to an exactness in point of time and value, which would sometimes present embarrassing obstacles. . . . . After all, it would be *a calculation upon conjecture*, and not upon facts."

Lively, 1 Gall. 325.

VIII.

The admitted evidence should have been submitted to the jury.

If the rulings of the Court, in the admission and exclusion of testimony were correct, in every instance, yet the admitted evidence was susceptible of—if it did not, indeed, require—a construction impeaching the legality and validity of the appraiser's proceedings, whether had under the Revised Statutes and the seventh, or under the ninth, section of the act of 1883; and required that the jury should have had an opportunity to construe it.

Neither statute makes an unrealized, future, contingent 'profit' an element of dutiable value. A reading of their provisions establishes this. Each bases the assessment upon an ascertained *fact*—not upon a conjectural contingency. The Revised Statutes made "the *actual* market-value" the basis, and section seven forbids the addition of 'charges'—those enumerated in R. S. §§ 2907-8 or in *any* other provision of law. This

market-value is *a present fact*, capable of proof by evidence; if a market, and "wholesale price" therein, exists. It is not arrived at by an analysis, or computation, of items. If its existence is not established, to the appraiser's satisfaction, he can ascertain other *enumerated* facts; and from them *alone* construct a basis for levying the duty.

First. We were entitled to go to the jury upon the question which method of appraisal was adopted, upon the admitted evidence. (Rec. 40 to 43; 47, fol. 66; 52, fol. 75; *54–5, fol. 80;* bottoms of 58, 59, 60; 62–3, fols. 90–1; 65 top; 72, 75; 77, bottom, and 78; 85; 92 top; 93. Also, this brief, *ante*, pp. 2 to 5; 8; 10; 15, 19; 39, 40; 43 and 44.)

Second. The jury should have decided whether, 'market-value' (if that were the basis of assessment) was illegally made to include charges, commissions, or items excluded by law. (Rec. pp. 41; 42; 48, fol. 67; 54, fols. 78 and 79; 63; 81, fol. 114; 82, fol. 116.)

Third. We had a right to have the jury ascertain, from the evidence before them, whether or not the appraiser failed to arrive at a market-value satisfactory to him; and, thereupon, proceeding under section nine, Act of 1883, included in the basis of duty reported by him and adopted by the defendant elements which that section does not prescribe.

To our minds, the testimony given is very persuasive that such was the course pursued.

The invoices all state "stitches" and data showing *component* value rather than market value, except as these items *may* (in a long average—not in the particular instance) enter into and regulate the latter. (Rec. 9 to 34.)

"The cost of the cloth and the number of stitches stated in the invoices" were found to be correct, upon examination by the customs officers. (*Id.* 41, bottom; 42 bottom and 43 top.)

"The correctness of the invoices themselves was not questioned." The plaintiff then stated to the re-appraisers how the goods were procured and dealt with. "This is what I told them there on the re-appraisement. The expenses connected with all these different manipulations are all contained in the invoices, and they form the basis of the *cost* at which the goods are figured in our invoices," etc. Witnesses having substantiated these statements, the re-appraisers conferred thereon, and it was declared the plaintiffs "were *manufacturers*"; hence, "it was necessary to add the profit a manufacturer WOULD make," etc. (Rec. 42.)

"THE ONLY QUESTION WAS, WHETHER AN ADDITION SHOULD BE MADE FOR MANUFACTURERS' PROFIT." *(Id.*, 43 top.*)*

"St. Gall is the principal market for embroideries. . . These goods were not standard goods . . . not reported in any price-current, etc. . . As far as I know, none of our goods were bought or sold in St. Gall or in Switzerland." *(Id.*, 43.*)*

If there was no Swiss market for these goods, they could have no "*actual* market-value" there; from which the inference is irresistible that the appraiser could satisfactorily ascertain none, and *must* have resorted to the method of procedure provided by section nine for that contingency.

That our embroideries had no market-value in the country of their production was a proposition abundantly supported by testimony. (Rec. 48, fol. 68, 52; fol. 75; 53, fol. 77; 78, fol. 109.)

The most irrefragible evidence of the fact, however, is the very protracted examination of the re-appraisers to establish the *cost of production* and the several items of that cost. (Rec. 79 to 92; and *passim*.)

IX.

Evidence wrongly admitted.

I. Mr. Richard Muser, a plaintiff, began business in New-York in 1862, commencing to import embroideries in 1867. Upon cross-examination he testified that the method of appraising embroideries, in this port, had been the same the record shows from 1878 to the time of trial, except a few months from the Spring to the Fall of 1885. In the early fall of that year "there was considerable discussion as to the proper mode of appraising cotton embroideries." There was a meeting of parties interested in that trade, at the Manhattan Hotel, who agreed that the stitch-basis was "the only way of arriving at the value of cotton embroideries; and this agreement was embodied in the form of resolutions. The witness, upon the stand, said any appraisement upon mere view, without a stitch-count, was impossible and impracticable. (Rec. 43 to 45 top.) He was then asked, by the U. S. Atty.;—

"Q. Is it not the fact that you, as a member of this committee, informed the government-officers that the proper mode of determining the value was to take the cost of these various elements and add ten per cent to the total?"

Ans. "I *deny* it. I did *not*. I never had any conference with the government-officers. This thing was all prepared and laid before me, and it was accepted by the merchants in order to get some basis to deal with the Government. I told Mr. Coombs, when he approached me upon this matter, 'I will sign it, *but I will sign it under protest, because I know it is unjust*': and I wrote, on the same day that I signed it, (when the document was brought to my office) a letter to Mr. Coombs, the chairman of the committee of the general appraisers, telling him that I had signed this *under duress*, and that I was satisfied that it was unjust, *and that I would continue to pay my duties under protest.*

I signed a paper which stated that this was the correct mode of appraising these goods:—and I affirm that

it is the only correct mode of appraising the goods, *except the addition of ten per cent.* If I signed the statement that the ten per cent was a necessary addition, I signed it under protest, and gave my reasons, the same day, to Mr. Coombs. I signed that paper, at that time, in order to arrive at a basis on which business could be transacted without any unnecessary delay." (Rec. 45.)

He then acknowledged his signature to the paper, which the defendant's counsel offered in evidence, and it was admitted, notwithstanding the plaintiffs' objection to its competency, it being executed in 1885, and the entries in suit made in 1887. *(Ibid.)*

It had no bearing upon the issues in the pending controversy. That Mr. Richard Muser had, in 1885, before Mr. Magone became collector, placed his name to a paper indicating a course to be pursued by the then appraiser (Mr. Coombs) had no *tendency* to prove the legality of re-appraisements in 1887, by Messrs. Brower and Downes, then general appraisers, and their merchant associates, of the importations of Muser Brothers, who had protested, in the precise form required by law, against the method pursued with relation to these particular goods, brought in by the vessels and at the dates specified. (Rec. 40.)

This is so, irrespective of the circumstance that Mr. Richard Muser, on the very day he signed, notified Mr. Coombs that he did so under protest and duress, "in order to arrive at a basis on which business could be transacted"; and that the duties would continue to be paid under protest.

All it amounted to was that a course was recommended by Mr. Coombs which Mr. Muser then told him he did not consider correct; and would protest, so as bring the question of its legality to the attention of the collector and the Secretary, and finally have it judicially determined.

It estopped neither party; misled nobody.

It was to meet the exigency of a pressing situation. "There was an accumulation of goods," tied up in the

appraisers' stores for months, and merchants "were willing to accede to almost anything in order to make a *modus vivendi* with the government, to get their goods," &c. (Rec. 50 bottom.) But Mr. Muser *then* signified that this arrangement was merely *to have the goods passed through the appraiser's stores*, and that he would protest, so as to protect his rights, and have the question settled by higher authority.

Prior to March 3, 1883—in 1878—some agreement might be advantageous to both parties, in respect of having no actual market value; but after March 3, 1883, section 9, provided a statutory method of procedure in such cases; and any protesting merchant had a right to insist that it should be pursued.

Taken with the parol and paper testimony relating to it, the most that can be claimed for this document is that it was a circumstance to be considered by the jury;—and then the cause is not submitted to the jury.

The judge who admitted it undoubtedly gave it weight when he determined to direct a verdict against us; whereas it was not legally entitled to any.

"Each importation is a new case. . . . Every invoice must be appraised on *its own* merits"; not, despite protests and appeals, according to some formula of an old paper signed under duress, and repudiated.

Goodsell v. Briggs, 1 Holmes, 301.

"Each invoice and entry was to be deemed and treated as a separate transaction for *appraisement*, and for the assessment of duties."

Sampson v. Peaslee, 20 Howd. 580.

II. Mr. Muser was asked if his buyer on the other side was paid a salary? Objected to as immaterial; and no part of the cost of *manufacturing* the goods. (Rec. 47, fol. 66.) He said all their employees were paid salaries.

This question certainly had no *tendency* to prove the correctness of the assessment, if based upon market-

value ; nor to establish any one of the items specified in Section 9.

III. He was asked if every house doing any considerable business in this line in N. Y. city was not represented at the Manhattan hotel meeting. The plaintiffs' objection to this question was overruled, and the witness said he did not know if every house was there, but a great many were. (Rec. 48, fol. 68.)

The Court admitted it "upon the theory that, it being a matter to be determined by the appraiser what *the expense of manufacturing* is, the statements of those who are in the trade is competent," etc. *(Ib.)*

This is an assumption by the Court that the appraisser proceeded under Section 9 ; but the testimony had no tendency to establish the character of any item specified in that section. If it had, it would be only a circumstance for the jury ; not the basis of a directed verdict.

The next question, still more objectionable, must follow the fate of this one. (Rec. 48, 49.)

X.

Evidence wrongly excluded.

I. George C. T. Seaman, the examiner, whose duty it was to examine these goods, was asked what he did in that behalf, and if he had aught to do with the reappraisement of the goods. (Rec. 41.)

We had a right to show that he attended the reappraisement, as preliminary to proving that the effort was to ascertain the cost of manufacture, in default of a satisfactory market-value.

II. Mr. Richard Muser having been cross-examined as to salaries and expenses of his firm's St. Gall house, was asked, upon re-direct, whether these were such expenses as a commission-house covers by its commission. (Rec. 49, fol. 69.) Excluded. *(Ib.)*

It should have been admitted, as showing the items were no part of the cost of materials, or of manufacture; as they certainly were not of actual market-value, at a given time and place; but were such as were actually covered by a 'charge' for 'commission,' which the statute expressly excluded from dutiable value.

The same may be said of the questions as to commission-houses in St. Gall ready to do what plaintiffs' house there did for them; and as to the rate of commission that would be charged for such services, including the items of expense, etc. (Rec., 51, 53 and 54.)

III. Here is an excluded question which we deem important and certainly admissible. This was asked of Henry W. Coombs, hereinbefore mentioned as general appraiser at the time of the Manhattan-Hotel meeting;—

"Q. Will you state whether or not there was any market-value for cotton embroideries in Switzerland in 1885, or *since that time?*" (Rec. 52 top.)

The only ground of objection and exclusion was *immateriality. (Ib.)*

"Facts relevant to the issue are facts from the existence of which inferences as to the existence of the facts in issue may be drawn.

A fact is relevant to another fact when the existence of the one can be shown to be the cause or one of the causes, or the effect or one of the effects, of the existtence of the other; or *when the existence of the one, either alone or together with the other facts, renders the existence of the other highly probable,* or improbable, according to the common course of events."

Steph. Dig. XIII.

We alleged in our complaint (See its 3d paragraph, record, p. 3, fol. 7) and proved (Rec. 94, fol. 138) that the collector had exacted $258.40 from us in excess of the sums indicated as duties accruing under our entries, which we paid under protest, etc. Our protest declared that these exactions were illegally made, whether considered as arising from an illegal inclusion of forbidden items as elements of market value, under section 7, or as elements of cost under section 9 of the act of 1883.

We had the right to prove directly that the re-appraisers proceeded to ascertain cost, under sec. 9, in default of any satisfactorily-ascertainable market value. And our right to establish the adoption of this course by circumstantial evidence is just as absolute as our right to prove it directly.

One circumstance to prove this, almost (or quite) irresistible, was the fact that no market value existed; or, if you please, that witnesses thoroughly acquainted with the Swiss market would testify that no such market value existed.

The remarks and citations here presented apply to all similar questions, put for the same purpose and having the same tendency, which were excluded by the Court.

"Whatever testimony is offered which would assist in knowing which party spoke the truth of the issue is relevant. . . In determining whether evidence is relevant, *all* the issues must be kept in view, as it may be admissible as to one though not as to another."

Plattner v. Palmer, 78 N. Y., 95, 98.

In the sentence preceding that last above quoted FOLGER, C. J., observed that testimony is 'irrelevant' when "the connection between the fact which it proves and the fact in issue is too remote and conjectural." (78 N. Y. 98 middle.)

In the present instance, the connection was a logical necessity. If we had been permitted to prove by this witness and question that there was *no* market value,

it would be established that the appraiser could not satisfactorily ascertain one. It would be morally certain that he proceeded under section 9, while exceeding the authority this section conferred. Thus it was very *material* to support our claim of an illegal exaction.

"Testimony is relevant which has a tendency, however remote, to establish the probability of the fact in controversy."

Trull v. True, 33 Maine, 367.
Belden v. Lamb, 17 Conn. 441.
Fitzwater v. Stout, 16 Pa. St. 22.
Home v. Weide, 78 U. S. (11 Wall.) 440.

In several sections, to which reference may be made upon the oral argument, Wharton maintains our proposition; that "Relevancy is that which conduces to the proof of *a pertinent hypothesis.*" 1 Whart. Ev. § 20 *et seq.*

Upon one hand, while asserting that Congress excluded the items to which our protest refers from market and dutiable value, we set up the hypothesis that the Appraiser, finding no satisfactory market value, attempted to ascertain cost of production under section 9, but did not confine himself to the elements of dutiable cost there enumerated.

Our position in this case is just what it was in Oberteuffer's (116 U. S. 499) upon the argument of which the late Justice MATTHEWS asked us if the cartons there in question did not constitute part of the sum which the importer must receive from his vendee to make himself whole upon his importation; our reply to which was that it was of no consequence if such were the fact, since Congress had the right to fix as it pleased the basis of assessment and had excluded these incidental expenses, without regard to where they ultimately fell. The argument is still stronger in the present case, as to the exclusion of conjectural, hypothetical profits that may (or may not) be realized in this country; and which in the case of purchased goods are covered by "commissions" expressly exempted from

duty; and omitted from the enumeration of items which, for dutiable purposes, shall be deemed the cost of production.

The hypothesis upon which we proposed the foregoing and other similar excluded questions was one abundantly supported as probable (at least) by the admitted testimony. (Rec. pp. 9 to 43; 46; 47; 48 lower half; 50 middle).

We had the right to demonstrate its truth by the excluded testimony.

IV. The question put to plaintiffs' witness, Mr. Maloy, as to what the manufacturers did (Rec. 52, fol. 75) was excluded *solely* upon the ground that he had not shown himself qualified to answer. *(Id.* 53, fol. 76.) The record, at these pages, shows this ruling to be erroneous. *(Ibid.)*

This ruling is reviewable here. Spring v. Edgar, 96 U. S. 658 top.

One whose business in life constrains him to ascertain what others are doing knows their acts as well by observation as do the actors themselves. Oftentimes, the bystander sees more than the gamester. Each manufacturer knows what he does, individually; but one who goes around amongst them for years, in pursuit of his ordinary avocation, connected with them, knows what the whole body of manufacturers does. A person who, in purchasing a single cloak, prices a number, can thence testify to its value, as well as a dealer in the article. Printz v. Peo. 42 Mich. 144.

Champagne Cases, 3 Wall. 115 and 145.

V. This question—"whether or not goods like those of Mr. Muser, and such as were imported in 1887, had a market-value in St. Gall"—was excluded simply "as calling for a conclusion." (Rec. 53, fol. 77.)

The line between conclusion and fact is not always easily or distinctly drawn. A witness is asked *when* an act was done;—he gives an hour inferred from the

position of the sun, or stars, in the sky, or of the hands of a time-piece which may be fast or slow, or stopped.

Our question did not '*call for*' an inference. If the witness had based a reply upon inferential reasoning, that could be shown as ground of a motion to strike it out. We 'called for' a fact.

If the question itself shows that the subject-matter is one only susceptible of being determined by a compilation and comparison of many facts, and a conclusion drawn therefrom—as by application to many mercantile houses; 3 Wall. 145—then that is the best evidence of which that subject is capable, and it is admissible.

Berney v. Dinsmore, 141 Mass. 44.
Burton v. Driggs, 20 Wall. 136, top.

VI. Mr. Maloy was not allowed to state whether "any goods of the patterns of Mr. Muser's goods" were "for sale, or could be obtained upon orders in St. Gall, or in any other way, except from Mr. Muser's house, in 1887" (Rec. 53, fol. 77)—"on the ground that the witness, being a buyer for Arnold, Constable, had no relation with and *could* know nothing of the business of Muser Brothers." *(Ibid.)*

The Court rules, as matter of *law*, that a person who goes to buy (no matter for whom) cannot tell just as well as a vendor, or anybody else, whether he could effect a given purchase or not! (3 Wall. 148.)

VII. Mr. Maloy was held not qualified to state "for what services were commission-houses in St. Gall paid a commission"? (Rec. 53, bottom.)

Repeating what we have said, in foregoing paragraph IV, we respectfully submit that seventeen years' experience in buying of such houses, overseeing everything they did, and making the payments for their services *(Id.* 52–53*)* did qualify him to answer this question.

The same references indicate the error in ruling that there was no sufficient foundation laid for asking Mr.

Maloy if he *knew*, "of his own knowledge, what the commission houses in St. Gall *actually did*, in 1887, for their commission." *(Id.* 54, fol. 78.*)*

They also apply to the other excluded questions found upon that page (54) of the record. (See *ante*, pp. 10, 11; 54, 55.)

At the top of that page it will be seen that the Court excluded a question upon the ground that it did not appear what these commission-houses did, while refusing to let the witness tell what, to his knowledge, they did;—Mr. Muser having stated what his house did. *(Ante*, pp. 11; 54 and 55.)

VIII. Jacob Hirsh, merchant appraiser, upon the re-appraisement of some of our goods in suit, sustained the entry (Rec. 31 bot.) while the general appraiser made an advance, in which the collector concurred. *(Id.* 32.*)*

Mr. Hirsh testified that he recollected what occurred, and could state the grounds of the addition. He was asked to do so, but the question was excluded, not upon the objection indicated by the U. S. attorney, but because "it calls for inferences and conclusions." (Rec. 55 top.)

We believe this ruling erroneous; but will discuss it in connection with the exclusion of the two succeding questions that were ruled out; viz. one inquiring what the general appraiser said were his reasons for making the addition (excluded as immaterial and incompetent) and the other if the general appraiser made any explanatory statement of his reasons for signing his report making an advance *(Id.* 55, fol. 80*)* which was excluded as *immaterial* simply, upon the plaintiffs stating that they only designed to prove a mistake of the law in his action and not fraud upon the part of the officer. *(Id.* 55, fol. 81.*)*

We had a right to show incorrect application of the law, as much as we had to show fraud; the effect upon our pecuniary right being precisely the same from the

presence of mistake and from fraud in the proceedings—and equally unjustifiable; equally the ground of redress.

We had a right to show he made the advance by erroneously (however honestly) including charges; or items which the law does not admit as elements of dutiable value. Though the goods *per se* were sufficiently examined, and the cost of cloth and the stitching found to conform to the invoice statement, *the examination into the subject of dutiable value was not such as the law authorized and justified.* Burgess v. Converse, 2 Curt. 216.

Greeley v. Burgess, 18 How. 413.
Arthur v. Goddard, 96 U. S. 147.
Oberteuffer v. Robertson, 116 *Id.* 499.
Oelbermann v. Merritt, 123 *Id.* 356.
Badger v. Cusimano, 130 *Id.* 39.
Robertson v. Frank, 132 *Id.* 17.
Auffmordt v. Hedden, 137 *Id.* 324 bot.
Earnshaw v. U. S. 146 U. S. 66.

The objection we make to the proceedings is that *the law was disregarded;*—not that personal integrity was wanting; that the appraisers did *not* "act within the scope of the powers conferred" (137 U. S. 324–5, and cases there cited); that the appraisement was *not* "*properly* conducted." (146 *Id.* 66.)

Possibly, the Court was misled by an omission in the *syllabus* of Hilton v. Merritt, (110 U. S. 97 (stating the appraisal to be conclusive "in the absence of *fraud*") corrected in the *opinion* by requiring that the officers act "without fraud, AND *within the power conferred* on them by the statute." (110 U. S. 106.) See comments of this Court in 130 U. S. 42, 43.

An examination of the above-cited cases (and many other such might be cited) shows our present contention to be within the established principle. We lay down "the legal proposition" (96 U. S. 147) that, in fixing dutiable value, manufacturer's profit, or "charges", or expenses usually covered by excepted

"commissions" should not be included; that if, as the evidence legally *tended* (at the very least) to show, the appraisers acted under section 9, they had not "the power conferred upon them" to estimate and add in a "manufacturer's profit", which must be, *ex vi termini*, something *beyond* the cost of sending the goods to market.

Nor can illegal charges or items be lawfully exacted by concealing them under the title of "market value" (as was done in 116 U. S. 501 and in 130 *Id.* 39, 42 and 43); they can no more be 'estimated' as part of the value, than they can be added to it. (116 *Id.* 510, 511.) We had the same right to show—by the testimony of one participating in, or present at, the appraisement—that an illegal and excepted item was made part of the assessed value that we had thus to show that the assessment was not based upon the prescribed examination. (123 U. S. 356.) In either case, the grievance is that the importer's entry and payment is increased without the authority of law. In short, we have the right to show that *the method of computation* was illegal and wrong;—proceeding "upon a wrong principle". (132 U. S. 17, 26.)

Under the act of 1883, amply sufficient, redundant, revenue for all governmental purposes was obtainable by simply levying the prescribed rate upon the specified items of value which that law assigned to imported articles; and, at all events, the ministerial officers could not increase the receipts of an overflowing treasury by assessing items upon which the law laid no charge.

IX. The foregoing discussion indicates the grounds upon which we claim that the exclusion of the questions found upon pages 55 to 62 (inclusive) of the record, and in our assignments of error *(ante,* pp. 56 to 59) from XXXI to XLI inclusive, was erroneous.

If truly answered, the testimony elicited by each of these questions would tend to show the incorporation

into the valuation assigned to our goods of items excluded therefrom by law. We were endeavoring to show the true ground of the advance made upon our invoices, the disclosure of which would demonstrate the *illegality* of the exaction against which we protested. The Court acted, in ruling against us, upon the erroneous theory that we must claim and prove *fraud* to vitiate an advance by the appraisers. It persisted in the error (123 U. S. 362, near bottom) for which its judgment in Oelbermann v. Merritt *(Ibid.* 356) was reversed.

In glancing at these questions, our attention is attracted to a typographical error which might mislead, if not here noticed. Upon page 62, folio 89, of the record, the name of David Shoenfeld should *not* have been capitalized. The line commencing with this name is merely a statement by the witness, Hirsh, that Mr. Schoenfeld "was called as a witness before the board" of which Mr. Hirsh was a member; followed by an inquiry intended to bring out the fact that, in response to a remark or statement by Mr. Shoenfeld, the General Appraiser declared the application to the valuation of such embroideries of the "erroneous principle" of which we complain.

What has been hereinbefore written sufficiently indicates the line of argument in support of our assignments of error *(ante*, pp.) XLII and XLIII, based upon the exclusion of the two questions found upon the ninetysecond page, folio 134, of the record; put to draw out the fact that the addition of ten per centum to our invoices was made solely to cover items excluded by law from the dutiable value.

X. The questions (Rec. 93 bottom and 94) to which our assignments XLIV to XLVIII, inclusive *(ante*, pp. 59 and 60*)* relate were put to show that the arbitrary addition of ten per centum to our invoices did not cover any actual disbursement in the production of our goods, but a hypothetical, conjectural, unrealized "profit"

thereon, which the appraisers treated as a statutory element of value, whereas it is not a dutiable (but, *a priori*, only an imaginary) item ; non existent, only a thing of faith, at the date of duty accruing, "hoped for" but "not seen."

XI. Assignments XLIX to LI inclusive *(ante*, pp. 61 and 62*)* rest upon the exclusion of questions (Rec. 95, fol. 139) put to Mr. Brower (whom the previous evidence showed to be the General Appraiser making the advances upon some of our invoices) to obtain a statement of the ground of those advances ; that they represented items excluded from the assessment of duty by statute.

Mr. Brower was not permitted to say whether or not the ten per cent. advance he made represented supposititious "profits," or "charges" expressly excluded by law from such estimation for duty. These questions were not excluded as incompetent (Rec. 95, fol. 139) but as "*immaterial*" :—that it was "*immaterial*" whether or not duty was exacted from us for charges which Congress had declared should not be a subject of duty !

The objection taken, and sustained, to the last question put, upon the trial, indicates what we consider the fundamental error, permeating all the rulings of the court upon the trial, with reference to an importer's right to show, by inquiry and oral testimony, that the law has been ignored or violated in making a reappraisement for duty.

The question "Upon what ground, and to cover what, did you add the ten per cent, or the sum you did add, to the invoice?" was excluded *solely* upon the ground that the action of the re-appraising board was final, and cannot be reviewed in this action." (Rec. 95, fol. 139.)

The cases already cited (and many more that might be) from Greeley vs Burgess, 18 How. 413 (A. D. 1855) to Earnshaw's case (146 U. S. 60—A. D. 1892) show

the error of this ruling. If their action was final and not judicially reviewable, it could not be made a ground of recovery that they did not properly examine the goods (2 Curt. 216; 18 How. 413, and 123 U. S. 356); nor that the statement in the appraisers' return, that an addition was "to make market value" related to additions in fact made to include "charges" (116 U. S. 501 and 130 *Id.* 42, 43); nor that they "proceeded upon a wrong principle" (132 *Id.* 17) if all inquiry as to the principle which guided their proceedings was excluded. Apparently, the *volume* (132) containing the Frank case had not been printed when our case was tried below. (Rec. 8, folio 16.)

This decision (132 U. S. 18) could not have received *due* attention from the court; for it expressly declares that definite cost and charges (like those mentioned in the ninth section of the act of 1883) cannot be reached by an arbitrary addition of a percentage. (132 U. S. 26.) Then it must be allowable to prove that the appraisers attempted thus to reach the conclusion they did. It cannot be that ministerial officers can nullify the law, and impose illegal taxes, duty exempted items, by merely refraining from stating in their written returns that they have done so; or by misstating the facts.

In the Hilton case (110 U. S. 97), to a misconception of which we attribute the errors of which we here complain, the importers claimed a right to show an error of *judgment* (as to value) upon the part of the appraisers, by proof that their opinion attributed to the goods greater value than the opinions of the importers and their witnesses did. The claim was that the assigned value was *excessive per se;* not that it was illegal, by containing a prohibited item. We allege, not error of judgment, but disregard of law. An appraiser is equally acting "within the power conferred by statute" (110 U. S. 106 bottom) whether he calls a shawl worth $500 or $1000—even if he (honestly) assumes that to be worth $1000 which experts would agree to be worth but $500—or the converse. But he

is not acting within the power conferred, if he includes in his valuation a single dollar of cost, charges, commissions, coverings, or expense, which the law prohibits him from including. Through an insufficiently instructed judgment, he may state a value higher than a better-informed mind would put upon the goods, without the importer having any remedy. Where it is merely matter of opinion, and somebody's must prevail, the law gives controlling effect to that of the appraisers; but where the law prescribe the elements of value that alone are to be considered, the amount cannot be increased by considering other elements. This is the error of *law*, and not of judgment, of which we complain; of illegality, not mere excess; and for such violation of its provisions the law gives us redress; otherwise, a statute professedly mandatory would be merely advisory!

XI.

Conclusion.

Having thus gone over the evidence, we recur to our first proposition; that it was error "to direct a verdict for the defendant upon the ground that the plaintiffs had not proved facts sufficient to constitute a cause of action" (Rec. 95, fol. 140) the defendant offering no evidence *(Ib.)*; and to deny our motion to be allowed to go to the jury. *(Ibid.)*

Upon the judge's construction of the law, that an appraisement is only impeachable for fraud, his ruling was correct; but if it be impeachable for illegality, the facts which the jury would have been authorized to find, from the *admitted* testimony, would have entitled us to a verdict.

The jury could hardly have failed to find that the appraiser could not find any market value of our goods, satisfactory to him; hence, that he attempted to ascertain cost under section 9.

The first witnesses we called must have satisfied the jury that the customs officer wrote down as "market value" a sum including commission, charges, etc., which, as they knew, were not elements either of the statutory market value or of the statutory dutiable value; doing this, as they did in the Oberteuffer and Frank cases (116 U. S. 501 and 132 *Id.* 17), *because* they considered the act of 1883 prohibited the assessment of these items *eo nomine*, and to evade these provisions. (Rec. 41, fol. 54.)

There was no question but that the invoices, accepted as in form complying with the law and regulations, *truly stated the value of everything to which they assumed to affix a value.* (*Id.* 41, bottom, and 42, fol. 56.) The addition, compulsory in form (132 U. S. 17) was made, not to enhance the stated values, but to cover a specific item, which the appraisers insisted should be included and assessed, and which the importers protested was not assessable.

After hearing testimony and discussing the matter, the appraisers held "that we were manufacturers, and that it was necessary to add the profit that manufeaturers *would* make." (*Ib.* and fol. 57.)

"*There was no question as to the valuation as given in our invoice. The* ONLY *question was whether an addition should be made for manufacturer's profit.*" (Rec. 43 top.)

The admitted evidence was all one way, that there was no market-value in Switzerland for the articles imported. The Manhattan-hotel agreement, introduced by defendant upon cross-examination, itself shows this; that value of the materials and labor, plus a percentage was to be the basis, *because* the completed article, to be imported, had no general, ascertainable market value. (Rec. 46, 47.) This is confirmed by

other testimony. (*Id.* 52, fol. 75; 53, fol. 77; 56 top; Schedules "A" on pp. 58, 59 and 60; 62; 63; 65; 73; 75; 78, fol. 109; 85 top; 93, fol. 136.)

The jury, in concluding that the appraisers found no satisfactory market value, and therefore resorted to cost of production, would have taken just the view of the case that the Court did. (Rec. 48, fol. 68.)

This cost is something entirely distinct from market-value. It may be of equal amount; it may be more; it may be less; it may be slightly or greatly more or less. This is dependent upon circumstances. The two things but rarely and casually coincide. The general rule is difference.

The sole occasion that the appraiser has to determine "what the expense of manufacturing is" *(Ibid.)* is when he cannot satisfy himself of a market-value, "whether because such goods, etc., be consigned by the manufacturer abroad to his agents in the United States, or for any other reason." (22 Stats. 525, § 9; *ante*, p. 63.) In that contingency, he is to proceed under the ninth section of the act of 1883. *(Ibid.)*

The only *specific* ground of inability mentioned in this section is that which the evidence shows the appraisers alleged in the case at bar: they declared the consignees here to be the "manufacturers" of the importations. (Rec. 42, fol. 57.)

If the appraisers found the exigency to exist for which sec. 9 provides, and thereupon proceeded to ascertain the cost or value of the materials, "together with the EXPENSE of manufacturing," etc., they were bound by the limitations of that section; and had no right to add or consider any item which is not one of *expense* in the manufacture, or in the preparation for shipment. Nor can 'expenses' be reached "by an estimate or *percentage*." (132 U. S. 18 top.)

The jury should have been given the opportunity to decide whether or not the appraisers did proceed under section 9; and whether or not, undertaking to assess duty under its provisions, they included in their

basis of assessment an item ("manufacturer's profits") which this section does not; and which is not an item of 'expense'; and which the act of 1890, § 11, expressly covers by a percentage added to expense. (26 Stats. 136.)

Having regard to the testimony, there could be no other than affirmative answers to these questions, and a verdict for the plaintiffs.

XII.

Resumé.

To Summarize:

The question presented in this case is, what was the legal standard of value for the goods.

Was it the market value fixed by Section 2906 Revised Statutes, as amended by Section 7 of the Act of March 3, 1883, or;

Was it the standard fixed by Section 9 of that Act, or;

Was it some other standard—a standard adopted by Special Agents or by the Local Appraisers, or by the General or Merchant Appraiser, or some other assumed authority.

1st. It has been repeatedly decided by this Court that while an appraisement of merchandise which was conducted regularly and according to law was final and not reviewable by the Courts, it has been quite as squarely decided that when there were irregularities in an apraisement, or it had not been conducted according to law it was absolutely void.

Greeley v. Burgess.
Oelbermann v. Merritt.
Badger v. Cusimano.
Frank v. Robertson.

As neither judges nor juries are clairvoyants or mind-readers, the only basis on which they can reach a deter-

mination as to whether an appraisement was conducted regularly and according to law, is evidence of all the facts and proceedings connected with the reappraisement. Thus in Oelberman v. Merritt it was held by this Court, that a reappraisement could be overthrown by testimony that the appraisers did not examine the goods, and for that purpose the merchant appraiser himself was a competent witness.

In this case the testimony of the importer, of the General Appraiser, of the merchant appraiser and others was offered to show precisely what was done and said on the reappraisement, and it was excluded. And the direction in favor of the defendant was based on the ruling as expressed in the opinion of the Court, that no inquiry could be made into what had been done by the reappraisers. To make this ruling fit the decisions of this Court above cited, it must be held that an appraisement will be overthrown if you can show it was not regularly conducted; but you will not be allowed to show how it was conducted. The mere statement of this proposition is its sufficient refutation.

2nd. It has been repeatedly held by this Court that if the appraisers in determining dutiable value included charges for putting up or packing their act was void.

Oberteuffer vs. Robertson,
Badger vs. Cusimano,
Bradbury vs. Robertson.

Plaintiff offered to show by the witness Brower that charges had been included in the dutiable value fixed by the reappraisers, and the testimony was excluded.

For these errors the judgment should be reversed, and a *venire de nevo* awarded.

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Of counsel.

CHARLES CURIE,
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Attorney.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

FREDERICK W. MUSER ET AL., PLAINTIFFS in error,
vs.
DANIEL MAGONE, COLLECTOR OF THE PORT of New York.
No. 37.

IN ERROR TO THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR DEFENDANT IN ERROR.

This was an action to recover duties paid under protest. The importations were made in 1887, so that the case is governed by the tariff law of 1883. The action was tried before Judge Lacombe and a jury. A verdict was directed in favor of the collector, and the importers assign error.

The opinion of Judge Lacombe is reported at 41 Fed. Rep., 879. A copy is hereto appended.

The importations were of cotton embroideries from St. Gall, in Switzerland. There is no question as to the paragraph under which they are dutiable, namely, paragraph 325: "Cotton laces, embroideries, * * * 40% *ad valorem*."

The questions in the case related to the proper method of ascertaining the dutiable value of the embroideries for the purpose of computing the *ad valorem* percentage. The peculiarity in the case of St. Gall embroideries is that the value of each depends on the number of stitches in the embroidery—that is, on the particular pattern employed. It is necessary to count the stitches in every pattern as the first step in ascertaining the value. Each pattern being private property like a design patent, the difficulties of ascertaining market value are apparent. These importers claim that the articles had no market value at all. The goods were made to order for themselves; they therefore claim that the goods were to be appraised by taking the actual cost of the raw material and the actual disbursements incurred by themselves in finishing off the goods, allowing nothing for wages of superintendence, interest on capital, office rent, etc. The collector, however, claimed that cotton embroideries in general had a market value, even at St. Gall, within the understanding of the tariff laws, although it varied with the number of stitches in each piece of goods. The collector also claimed that the appraiser's decision on this point was conclusive; and the court so held.

STATEMENT OF FACTS.

The testimony in this case (practically all of which we claim to have been incompetent) may be divided into two portions: First, the testimony on one of the re-appraisals before the general appraiser and merchant appraiser, the record of which proceeding was put in evidence; second, further testimony bearing on the question of value introduced at the trial.

Finished embroideries were not kept in stock for sale in St. Gall in 1887. The goods were ordered from samples submitted by the manufacturers or by commission men or *commissionaires*. The *commissionaires*, as a rule, submit samples to the purchasers, buy the cloth, and turn it over to the manufacturer to make up (p. 52). They seem to be the nearest approach in the trade to the general wholesale dealers found in other localities. Their charge for their own services, according to plaintiff, is 3%, beside all expenses (p. 81). According to another witness, however, the *commissionaire* would require an advance of the necessary capital "to do the trade with," and also all the cash discounts, amounting to another 3% (p. 85). If he was asked to employ his own capital and furnish his own designs his charge would vary. It might be less than 10% or it might be more, but 10% would not be any more than a fair profit (pp. 86, 89). It was within the knowledge of the merchant appraiser that one of the largest manufacturers in St. Gall was coming to New York to do business for 10% profit (p. 91). The market value was actually arrived at by the general appraiser and collector by taking the actual disbursements and adding 10%.

The method adopted by plaintiffs (which appears to be substantially the same method as that adopted by other manufacturers and by *commissionaires* when they take the full charge of filling the order) is to buy the cloth from a Manchester agent and employ a designer, who draws the patterns, which are furnished to the purchaser for selection; or patterns may be purchased. Thep laintiffs have an office in St. Gall, and there contract with "owners of machines to embroider the patterns for so much per 100 stitches, including the thread or yarn used." The goods, when embroidered, are returned to plaintiffs' office "in the gray, and are then delivered by our office to a finisher, whose business it is to bleach them, and after they are bleached they are returned to the office; they are then cut up into suitable lengths, ticketed, prepared for shipment, packed in cartons, the cartons packed in wooden boxes, and shipped to this country, and invoiced" (pp. 42–3, 81–3). Plaintiffs' goods were invoiced at their actual gross cost (omitting "the usual cash discounts" if plaintiffs got any, p. 85, and omitting also any charge for designing). The invoices are set forth at pages 14 to 37. The plaintiffs added 3% to each invoice on entering the goods (pp. 11, 17, 22, 28, 30, 35), but this addition was not more than enough to cover the expense of designing alone (p. 89). Among the omissions in their valuation, for instance, was interest and risk on capital, which itself is sometimes rated at 8% (pp. 80–90). No allowance was made for salaries or other office expenses at St. Gall (p. 81). Muser attempted before the general appraisers to defend his 3% limit on the ground that that was what he charged to his

own customers, but on cross-examination the only customers he could name were his own brother and his own firm, while 3% appeared not to be his *maximum* charge, even to them (pp. 82–3, 87).

The proper method of appraising these St. Gall embroideries had long been a problem. From 1878 to 1885 they had been appraised in the same way as at present (p. 43). In 1885 a question had arisen and the method of appraising had been changed, with the result that the embroideries were advanced all the way from 10% to 40% (pp. 43, 51). The Treasury Department accordingly appointed an investigating commission, composed of General Appraiser Coombs and Messrs. Hinds and Lapp, who met at the public stores in New York City. The men interested in the cotton embroidery trade also had a meeting and appointed a committee to meet the commission and agree on a basis for future valuations. This committee consisted of John Gibb, of Mills & Gibb; Simon Goldenberg, of Goldenberg Bros. & Company; the plaintiff, Richard Muser, of Muser Bros.; Jacob Hirsh, of Einstein, Hirsh & Company; and Charles Haager, of Albert, Haager & Waldburger. It was agreed by the merchants that the method now adopted was "the proper mode of appraising cotton embroideries; * * * it is the only way of arriving at the value of cotton embroideries; everything else than on stitch basis is mere guesswork." "No two persons would agree on the same piece of goods; they would differ from 5 to 50%." A formal proposition was laid before the investigating committee by the merchants, having been unanimously carried in

their meeting and signed by all of the committee of five. This paper is set forth at pages 45–7 of the record. Among the resolutions unanimously adopted were the following:

> That it be recommended that the appraiser, in appraising cotton embroideries, oriental and Egyptian laces, should appraise them by counting the stitches and valuing them at the rate at which they are quoted by the U. S. consul on the day of shipment, adding to this the cost of the cloth and adding to this ten per cent, to be called manufacturer's profit; then the cost of bleaching, finishing, and putting up.

This, also, was signed by all the committee of five (pp. 44–7). By an amendment, also agreed to by the whole committee, the 10% was to be "added to the cost of the goods in a finished condition, including the cost of the bleaching, finishing, and putting up" (p. 47).

It will be noticed that this arrangement gave the importers the benefit of every doubt then entertained by the customs officials. The advances which had been "all the way from 10 to 40%" (p. 51) were now restricted to 10%, taking the *minimum* stitch rate (p. 46) as a basis.

The arrangement proposed and accepted was a permanent one, the valuation to vary only as the cost of the cloth, the stitch rate, etc., should vary in the future. Some of the merchants, however, continued attempts to escape from the system whose reasonableness they had endorsed. John Gibb stood by the proposition, and, as merchant appraiser on the reappraisement proceedings, which are here put in evidence, endorsed the 10% rate as reasonable in his own opinion (p. 91). Jacob Hirsh, however, also acting as

merchant appraiser, voted to sustain plaintiff's entry on the 3% basis (p. 31). Plaintiff himself submitted at the time to the 10% basis, but immediately repented of his subsequent action in agreeing that the 10% be computed upon the final cost of the goods, and *on the same day* sent to the investigators a written protest against this amendment of the merchants' proposition, saying:

> In connection with this amendment I beg to say that I signed it for the sake of "sweet peace," but reluctantly as far as my judgment is concerned. The authority for an exaction of a so-called manufacturer's profit of 10% on the cost of the price for cloth and stitching paid by the importer is a matter of grave doubt with me, but I have no doubt at all as to the illegality of an exaction of 10% manufacturer's profit on the charges incurred for bleaching and finishing. All embroideries are bought and sold in the "gray" (p. 50).

These plaintiffs, as we have stated, added 3% to each invoice on entering the goods. This addition was made to avoid the penalty in case the value should be raised 10% on the reappraisement (pp. 40–1). The appraiser, on the first appraisement, raised the duties by various figures from 3% to 9% (pp. 11, 18, 22, 28, 31, 35). In one case no reappraisement was asked. In one of the other cases Jacob Hirsh, as merchant appraiser, approved the entry. In the other cases the merchant appraisers recommended an advance of 6% (pp. 12, 18–19, 23–4, 35), but the general appraiser made the advance about 10% (pp. 13, 19, 24, 32, 36). The collector decided in favor of the general appraiser. On the reappraisement proceedings Mr. Haager, who had been one of the merchants' com-

mittee, testified that an advance of 10 would be necessary to represent the true market value (pp. 71, 76). Mr. Gibb, as above stated, intimated the same opinion on his own independent information (p. 91). Mr. Billwiller, another merchant, gave the same opinion unqualifiedly in one case (p. 72), but in another case stated that he added the 10% "according to the decision of the general appraiser" (p. 58). Other witnesses added the 10% and swore that it represented "the true market value of the said articles on the day and at the place of exportation above mentioned," but afterwards appended to their affidavits statements that they were made "under compulsion" (pp. 59–60).

ARGUMENT.

I.

No objection to any of the original appraisements is available to plaintiff in error.

Except as to one importation reappraisements were had. This disposes of all defects in the original appraisement. Whether or not the importer may stand on the defects in the original appraisement, and sue without asking for a reappraisement, it is clear that demanding the latter remedy waives all defects in the proceedings already had. (*Burgess* v. *Converse*, 2 Curt., 216, 218–20.)

As to the one importation not reappraised (pp. 25–8, 41), an advance of 7% was made. The advance was made by direction of the assistant appraiser (p. 41). He was not called as a witness, and his reason for directing the advance

does not appear. Presumptively it was sufficient. (*Arthur* v. *Unkart*, 96 U. S., 118; *Herrman* v. *Robertson*, 152 U. S., 521, 523.)

Moreover, it is submitted (as argued by us in *Origet* v. *Hedden*, No. 19 of this term pp. 22–3), that there is no remedy for alleged irregularity or error in the original appraisement except by demanding a reappraisement.

The questions excluded in the testimony of the original examiner, at page 41, were excluded because they applied to the goods reappraised as well as to the importation as to which there was no reappraisement. As to the latter importation they were repeated and answered.

II.

The courts have no jurisdiction to review the decision as to market value upon a reappraisement.

If the appraisers made illegal charges in addition to the duties, if they were disqualified from acting, or if they failed to give themselves jurisdiction by first examining the goods as required by the statute, the illegal proceedings may be set aside. But the decision of qualified appraisers, made after due examination of the goods, is absolutely final upon the issue of valuation. If they find that the goods have a market value and ascertain that market value, there is no form of proceeding in which the decision can be reviewed.

The decision of *the collector* as to *classification and charges* is, indeed, final only in case no proper protest is made. (Rev. St., § 2931.)

But the decision of *the appraisers*, or of the collector when acting as umpire between the appraisers, under the next preceding section, is absolutely final for all purposes.

Section 2930 is as follows:

> If the importer, owner, agent, or consignee of any merchandise shall be dissatisfied with the appraisement, and shall have complied with the foregoing requisitions, he may forthwith give notice to the collector, in writing, of such dissatisfaction; on the receipt of which the collector shall select one discreet and experienced merchant to be associated with one of the general appraisers wherever practicable, or two discreet and experienced merchants, citizens of the United States, familiar with the character and value of the goods in question, to examine and appraise the same, agreeably to the foregoing provisions; and if they shall disagree, the collector shall decide between them; *and the appraisement thus determined shall be final, and be deemed to be the true value, and the duties shall be levied thereon accordingly.*

It is the concluding clause of this section which destroys the exactness of the analogy of appraisers' decisions to those of commissioners or viewers in eminent domain proceedings, &c., whose decisions are not expressly made final.

The authorities have therefore been uniform that a finding made under section 2930 is absolutely unreviewable and indisputable.

> The Government has the right to prescribe the conditions attending the importation of goods upon which it will permit the collector to be sued. One of

> these conditions is that the appraisal shall be regarded as final. * * * The provision as to the finality of the appraisement is virtually a rule of evidence to be observed in the trial of the suit brought against the collector. (*Auffmordt* v. *Hedden*, 137 U. S., 310, 329; *Passavant* v. *United States*, 148 U. S., 214, 219.)

If it were possible to review the appraisers' decision in any way, the most competent, relevant, and primary evidence upon the issue would be the record of the proceedings before them. *Per contra*, to hold this record incompetent is to deny all right of review. In *Hilton* v. *Merritt* (110 U. S., 97) and *Auffmordt* v. *Hedden* (137 U. S., 310, 319, 325), however, the record of proceedings was excluded by the trial court, and the ruling was sustained by this court on writ of error.

It is true that in some cases the courts have claimed a certain extent of jurisdiction over the reappraisers, but never upon the issue of valuation. In *Tucker* v. *Kane* (Taney, 146, 150), Chief Justice Taney said:

> Certainly if it appeared *on the face of the appraisement that they merely intended to ascertain the price* paid for the pimento, and *not its market value* in the principal markets in the country, the appraisement would be a nullity, and would not fix the dutiable value of the goods. But * * * the language used by the merchant appraisers will not justify that construction.

That is, their report would then show that there never had been any appraisement at all, and the appraisers had never even commenced to exercise their powers.

In *Gray* v. *Lawrence* (3 Blatchf., 117) the appraisers found that the invoice was correct as made out, and nevertheless raised the valuation in contradiction of their own finding. The imported article was one of those which by trade usage has a nominal permanent price, the market value being arrived at by quoting discounts therefrom. The Secretary of the Treasury had issued a general order to the appraisers that only 2½ per cent discount should be allowed in any case, and the appraisers *showed by their report* that they had felt obliged to follow this ruling, against their own judment, thus voluntarily furnishing for the review of their action what perhaps otherwise could not have been obtained, namely, a piece of competent evidence. Their decision was, of course, held error. The appraisers, having approved the invoice valuation, had thereby exhausted their own jurisdiction; and thereafter making additions to what they had found to be the true valuation was an act *ultra vires*.

In *Greely* v. *Thompson* (10 How., 225) the question at issue was whether the merchandise should be valued as of the time of procurement or as of the time of exportation. The appraisers stated upon the face of their certificate that they had adopted the latter date (p. 228). The court held that the date thus adopted was the wrong one and therefore immaterial to the appraisement, so that no valuation according to the statute had been made.

In *Oberteuffer* v. *Robertson* (116 U. S., 499) the inclusion of improper items as to cartons and packing appeared on the face of the papers (pp. 501, 516).

In *Oelbermann* v. *Merritt* (123 U. S., 356) the proceeding was not set aside for error in arriving at a valuation, but for two more fundamental defects: First, that the merchant appraiser was not qualified; second, that he had not examined the goods, and, therefore, could not legally appraise them. His action was, therefore, precisely parallel to the decision of a court of limited jurisdiction when the facts necessary to confer jurisdiction upon the court do not exist. (See *Noble* v. *Union River Logging R. R. Co.*, 147 U. S., 165, 173–4.) It was therefore held that the merchant appraiser could be asked whether he had made the necessary examination; but plaintiffs' counsel conceded (Brief, p. 14) that he "could not be heard either in a collateral or direct proceeding to disclose the evidence upon which he relied, or the reasons which actuated him in coming to his conclusions."

It does not appear how the question arose in *Badger* v. *Cusimano* (130 U. S., 39). That case came to this court on findings of fact, the nature of the evidence not appearing. It contained, however, no impeachment of the valuation made by the appraisers, as has been pointed out in the *Auffmordt* case, *infra*, at p. 328.

In *Robertson* v. *Frank* (132 U. S., 17) the objection made was to the original appraisement, there having been no reappraisement. The objection did not relate to valuation, but to the addition of illegal items independent of the value of the goods. The court said (p. 24):

> It is undoubtedly the general rule that the valuation of merchandise made by the appraiser, unappealed from to merchant appraisers, is conclusive; but whilst this is the general rule, it is subject to the

> qualification that if the appraiser proceed upon a wrong principle, contrary to law, and this be made to appear, his appraisement is not unimpeachable. * * * What is complained of in the present case is that the plaintiffs were required to *add to the market value* of the goods, at the places from which they were exported, transportation charges and expenses for labor which were never incurred.

There was no review by the appraiser in this case of the importer's valuation. The irregularity complained of was that the importer was forced by the appraiser to add to his entry and invoice the words: "*Shipping charges* added as required by the appraiser to make 5 cents Colombian currency per bunch, 140.38 pesos. *Transportation charges* added as required by appraiser," etc. Whether the *obiter dictum* as to proceeding upon a wrong principle, contrary to law, is applicable to the valuation of the goods in the strict sense, *quaere*.

In *Auffmordt* v. *Hedden* (137 U. S., 310, 321) the court remarks that the appraiser may properly be required to "give the particulars of the method pursued," but this referred not to the method of arriving at a valuation, but to whether the importer was allowed to be present and confront witnesses, etc.

In *Hedden* v. *Iselin* (142 U. S., 676) there was evidence sufficient to go to the jury in support of the two objections sustained in the *Oelbermann* case, *supra*, namely, that there had not been a proper examination by the appraisers prior to the appraisement, and that the merchant appraisers were disqualified. The opinion of Mr. Justice Blatchford does, indeed, end with a sentence

in which it might be inferred that the jury could inquire into the operation of the merchant appraisers' minds: "The question submitted to and passed upon by the jury, and found in favor of the plaintiffs, was whether the reappraisers were controlled by some outside influence so that they did not act their own judgment." But there was no exception raising any such question in this court. The case had gone to the jury on another and sufficient ground. The remark was *obiter;* and in the subsequent case of *Passavant* v. *United States* (148 U. S., 214) this court held that the circuit court has no jurisdiction to consider whether the appraisers act under compulsion and not according to their own judgment. Examination of the record in that case (p. 2) will show that the allegations of fact in the petition had been carefully drawn so as to bring it within the supposed authority of the *Iselin* opinion on this point. It is true that the *Passavant* case was a petition for review of the action of the Board of General Appraisers under the customs administrative act of 1890; but the latter act is the same in effect as the Revised Statutes so far as the finality of the appraisers' valuation is concerned. It is also true that these allegations of fact in the petition in the *Passavant* case were put in issue by the answer; but this was immaterial to the decision, for the case came up on certificate on the jurisdictional question alone, as follows:

> In the matter of the application of Passavant & Company, etc. Upon the foregoing petition and the motion of the U. S. attorney for said district to dismiss the same for want of jurisdiction, the question arose as to *the jurisdiction of the court to hear and*

> *determine upon the evidence to be adduced in support thereof these allegations of said petition*, to wit: * * * That said appraisement and the additions made to the invoice value *were not made in accordance with the judgment of the appraisers*, but that in making said additions they acted *upon compulsion and against their own judgment* as to the value of said goods. * * * The circuit court granted the motion to dismiss and determined upon the question presented that it had no jurisdiction to enter upon, hear, and decide the issues sought to be raised by the aforesaid allegations of said petition, and now certifies this jurisdictional question to the Supreme Court of the United States. (Record in *Passavant* case, pp. 13, 14.)

This decision, therefore, clears away the doubts that might otherwise be raised by the last page of the opinion in the *Iselin* Case, and leaves the latter case effective merely as a reapplication of the doctrine of *Oelbermann* v. *Merritt*.

It must be evident that in appraising articles which are not quoted in public prices-current or otherwise, the valuation of the appraisers must often be checked and verified, if not entirely arrived at, by investigations as to cost of production, including the elements commonly lumped under the head of "manufacturer's profit," really separable by analysis into interest on capital, compensation for risk, wages of superintendence (in the sense used by political economists), proportion of office rent, etc.

If the court can examine the appraisers as to the operation of their own minds, examine the parties as to chance remarks of the appraisers in explaining their own decisions, and make minute investigations into the facts bearing

on value—even if the court can examine that portion of the information acted on by the appraisers which is contained in the stenographer's minutes and documentary evidence produced before them—the whole matter of valuation is practically thrown open.

III.

The work of the appraisers upon these invoices was a finding of market value. They did not, as plaintiff's counsel puts it, impale themselves upon the other horn of the dilemma by attempting to act under section 9 of the act of 1883.

This is shown by the very best evidence, namely, their own official certificates (pp. 11–13, 17–19, 22–4, 28, 30–2, 35–6).

IV.

None of the evidence in this case was proper for consideration by the jury.

It has already been shown that the record of the proceedings before the appraiser was inadmissible. Although actually admitted by the court, it is, nevertheless, to be disregarded. The court's error in admitting the evidence did not require it to repeat the error by leaving the case to the jury. By directing a verdict it substantially withdrew the incompetent evidence, a right which it clearly had (*Specht* v. *Howard*, 16 Wall., 564; *Pennsylvania Co.*, v. *Roy*, 102 U. S., 451.)

If the record before the reappraisers was inadmissible, still more inadmissible was the new evidence received on

the trial bearing on the valuation of these goods, and the general appraiser's verbal opinion as reported by Muser (p. 42).

The general appraiser can not be asked his reasons for his decision upon the reappraisement. This is inadmissible on the same grounds as the other kinds of evidence offered, which have been already considered.

It is respectfully submitted, moreover, that the testimony of the general appraiser would be inadmissible to impeach his own appraisement, even if it could be otherwise attacked for error or irregularity. Such evidence was actually offered and excluded and the exclusion sustained in *Hilton* v. *Merritt* (110 U. S., 97, 100).

This decision is in line with the general current of authority as to competency of jurymen, judges, arbitrators, etc. (*Woodward* v. *Leavitt* (107 Mass., 453, 461, and cases cited); *Bigelow* v. *Maynard* (4 Cush., 317); *Strong* v. *Strong* (9 Cush., 560); *Spurck* v. *Crook* (19 Ill., 415); *Chapman* v. *Ewing* (78 Ala., 403); *Ward* v. *Gould* (5 Pick, 291); *Aldrich* v. *Jessiman* (8 N. H., 516); *Cobb* v. *Dortch* (52 Ga., 548); *Mulligan* v. *Perry* (64 Ga., 567); *Alexander* v. *McNear* (28 Fed. Rep., 403, per Sawyer, J.); *Duke of Buccleugh* v. *Metropolitan Board of Works* (L. R. 5 H. L. 418; 1 Greenleaf Ev., § 249; 2 id., § 78); *Agan* v *Hey* (30 Hun., 591, 594); *Robinson* v. *N. Y., L. E. & W. R. R. Co.* (64 Hun., 41, 48); *Packet Company* v. *Sickles* (5 Wall., 580, 593). The opinion to the contrary of Mr. Justice Nelson in *Canal Bank* v. *Mayor of Albany* (9 Wend., 244, 254), followed in *Marquette, &c., Co.* v. *Probate Judge* (53 Mich., 217), is not in line

with the weight of authority. In none of these cases, however, are we met with such an absolute statutory declaration of finality as that contained in section 2930 of the Revised Statutes.

V.

Assuming, however, that the reappraisers were endeavoring to arrive at the actual cost of the articles under section 9 of the act of 1883, there is no indication that they committed error in adding the 10% to the invoice value. Such evidence as there is indicates the contrary.

(A) It must be remembered that part only of the evidence before the reappraisers is to be found in the record. They are not confined to statements of witnesses produced before them in the pending proceeding, but may make use of their own knowledge and experience as business men, and also of all information which they have obtained in previous proceedings of a similar nature. Such prior information may have been much more weighty than anything brought before them in any given case. They may also take the verbal statements of merchants who, for business reasons, can not be persuaded to let their names go on record as witnesses for the Government. (See brief in *Origet* v. *Hedden*, No. 19 of this term, pp. 9–15.) The presumptions are in favor of the collector's action and not against it. (*Arthur* v. *Unkart*, 96 U. S., 118; *Herrman* v. *Robertson*, 152 U. S., 521, 523.) If, therefore, there was no evidence in the stenographer's minutes and affidavits indorsed in any particular reappraisement proceeding, tending to support the decision in

the proceeding, that would not imply that the reappraisers committed error. Nor is there any statement in the record that it contains all even of the evidence adduced directly in these proceedings, but only "certain papers" (p. 56).

(B) The importers argue that there is no "true and actual market value and wholesale price" for St. Gall cotton embroideries within the meaning of § 9 of the tariff act of March 3, 1883, and that therefore the goods must be appraised at actual cost of materials plus expense of manufacturing, etc. Under that section they claim that in every case the cost of the particular articles then imported must be ascertained as distinguished from the average cost to all the manufacturers of similar articles; that in ascertaining the expenses no allowance is to be made for such items as office rent, salaries, risk of capital, etc.; and that the method of appraisement outlined in the section is exclusive.

§ 9 is as follows:

> If upon the appraisal of imported goods, wares, and merchandise it shall appear that the true and actual market value and wholesale price thereof, as provided by law, can not be ascertained *to the satisfaction of the appraiser*, whether because such goods, wares, and merchandise be consigned for sale by the manufacturer abroad to his agent in the United States, or for any other reason, *it shall then be lawful to appraise* the same by ascertaining the cost or value of the materials composing such merchandise, at the time and place of manufacture, together with the expense of manufacturing, preparing, and putting up such merchandise for shipment, and in no case shall

the value of such goods, wares, and merchandise be appraised at less than the total cost or value thus ascertained.

The first comment to be made is that the section does not purport to prohibit all other methods of appraisement except that therein laid down. The section provides that "it shall then be lawful to appraise" in the method suggested. No such word as "must" is included. Nothing expressly restricts them to investigations as to cost, when there is a better method of reaching value. The section seems intended to enlarge, not to restrict, the powers of the appraisers.

Secondly, it seems to be no more a just than a literal interpretation of this section to require that each manufacturer's importations be appraised separately, the appraisers confining themselves to such evidence as they can obtain of the cost and expenses *to that particular manufacturer* of the goods in question. Such a course would probably result in great inequality of appraisement. Some manufacturers are less honest than others and are more expert in covering their tracks and concealing items of expense that should be included. Some men produce their own material, and questions arise whether that branch of their business is charged with a proper profit in ascertaining the cost of the material. Every statutory interpretation that opens investigation into the actual cost of the particular lot of goods imported, as distinguished from the general market value of all goods of the same description, is an interpretation which throws the Government largely upon the importers' own statements and books, and which therefore the importer always favors. The difficulty of

obtaining any correct results through such interpretation is very well exemplified by the record in this action. The interpretation given to the statute by the custom-house officials was eminently fair and consistent with its letter and spirit. Finding that the price of these embroideries in the market varied with the cost of the cloth and number of stitches required by the pattern, the appraisers started in to find a fixed basis for estimating all the other elements entering into the value of the commodity. These elements included all the familiar items of office rents, wages of employees (including the designers), wages of superintendence, interest on capital, risk, etc. A short experiment in 1885 with the plan of estimating each case separately resulted in failure, confessed by importers and appraisers alike. A full discussion was then had, in which all the importers and a specially appointed committee of appraisers participated. All agreed that 10% on the expenses was a proper basis for action. The only difference of opinion was as to a very trifling sum, which point the importers formally conceded, having themselves obtained the benefit of the *minimum* stitch rate. The result was more favorable to the importers on the average than the previous system had been. This result was embodied in a formal document, unanimously adopted by the importers, signed by their committee, and confirmed by the committee of appraisers. Subsequent appraisers and collectors were entitled to take it as their starting point if they chose to do so. Nothing in this record shows affirmatively that the collector or appraisers in the case at bar assumed the statements in this document to be presump-

tively correct, but it was, doubtless, before them, and if they made such an assumption they were entitled to do it. They did not rely on the presumption alone, but heard at length all witnesses who were brought before them, and they analyzed the manufacturing business to the heart's content of the importer's counsel. The collector may have thought in the present case that by the size of his business and special advantages which he had, the actual cost to this importer was less than what is decided to be the actual value of his goods; and doubtless a collector had the right under § 9 to make an appraisement of cost instead of an appraisement of value. But taking all the importations of the various importers together and putting a uniform valuation on each, after allowing for difference in quality and pattern, was the fairest course to everybody, and quite as likely to be correct in any given instance as that which could be furnished by any other plan.

Thirdly, § 9, in speaking of "the expense of manufacturing, preparing, and putting up such merchandise" can not be satisfied, as this importer tries to satisfy it, by considering only the sums paid out to bleachers and finishers. The sum paid to the designer, the wages paid to employees, the manufacturer's own profit, so far as it represents what he would have to pay to others for superintendence if he did not attend to the business himself, are items of expense as much as any others; nor can interest or risk on capital be overlooked in any estimate of cost.

Affidavits and oral testimony sustained the collector's finding that this expense of manufacture, apart from the stitching, bleaching, and finishing, equaled 10% of all the other expenses put together. Muser denies this, but his

articles ought to be appraised. The statements were applicable to the future as well as to the present time. It certainly is relevant, both as tending to discredit the witness upon whose cross-examination it was introduced, and independently as an admission of the plaintiff.

II. Why is not the salary of the superintendent an item in the cost of manufacture?

III. On cross-examination of a person offered as expert witness to prove that certain things are true, it would seem to be proper to ask him whether every person in the trade had not solemnly asserted the contrary. It is unnecessary to elaborate upon this, however, as without this bit of evidence there is enough to sustain the direction of the verdict.

VII.

Alleged errors in excluding evidence.

Here, also, we follow the order adopted by plaintiffs.

I. The questions asked of the custom-house examiner, Mr. Seaman, have already been considered (Point I, *supra*).

II. The question at page 49 relating to the similarity of Muser's expenses to those made by *commissionaires*, calls for matters fully brought out elsewhere in the record—namely, the methods adopted by the latter class of dealers. The question is based on his erroneous supposition that all expenses of manufacturing must be disallowed as commissions, if they happened to be paid to a man calling himself a *commissionaire*. The question was moreover too general, calling for a conclusion of the witness. (*Auff-*

mordt v. *Hedden*, 137 U. S., at p. 321.) The questions ruled out on pages 51, 53, and 54, as to *commissionaires*, also relate to matters brought out elsewhere and hereinbefore discussed. Plaintiff's counsel himself seems not to "deem" them "important." (Brief, p. 94, III, first sentence.)

III. At the top of page 52 the witness Coombs was asked "whether or not there was any market value for cotton embroideries in Switzerland in 1885 or since that time." Whether there was such a market value in 1885 or 1886 was immaterial in this case, and the question was in so far objectionable. (*Rossman* v. *Hedden*, 145 U. S., 561, 570; *Cadwalader* v. *Zeh*, 151 U. S., 171, 179.) The witness was not competent to answer as to market values in 1887, after he ceased to be an appraiser. Nor was it important for the jury to be informed as to a matter which the appraisers had already finally adjudicated. It does not appear upon what ground the objection was sustained; nor is this important, the question being objectionable in fact. (*Silsby* v. *Foote*, 14 How., 218.)

IV–VII. At pages 52-3 the witness Maloy was held incompetent to testify as to the course of business of manufacturers. The question of competency of an expert is one especially addressed to the discretion of the trial court, and not reviewable "unless clearly shown to be erroneous in matter of law." (*Stillwell M'fg Co.* v. *Phelps*, 130 U. S., 520, 527, & cas. cit.) It is unnecessary to consider the point here, because the question was fully answered in Muser's testimony, which sufficiently introduced the facts for the purpose of opposing the motion to

direct a verdict. When a verdict is directed against him, a litigant is no longer harmed by the prior exclusion of merely cumulative testimony. The question excluded as to the usual rate of commission in St. Gall in 1887 is also answered elsewhere (p. 62), as are the questions relating to the sale of goods worked on Mr. Muser's patterns, and as to the nature of the services of commission houses, on this page, as well as all the questions excluded on page 54; and all these questions were asked in the endeavor to dispute what the appraisers had adjudicated.

VIII. The exclusion of Hirsh's testimony as to the reason given by the general appraiser for making an addition to one of the invoices is based on grounds discussed in Point IV, *supra*. This witness was also asked whether he himself added any amount to the invoice valuation as manufacturer's profit. It is sufficient to say on this that Hirsh elsewhere is shown to have made no additions to valuation, but sustained Muser's entry (p. 31).

IX, X. The question ruled out in Schoonmaker's testimony (p. 56) is answered elsewhere (p. 43). It may be conceded that the first question to Hirsh on page 61 as to what examination he made of the goods would have been proper had the protest been broad enough to cover it. But no claim was made in the protest that the goods were not properly examined by the appraisers. The importers, therefore, waived all claims which they might have made in this regard. (*Herrmann* v. *Robertson*, 152 U. S., 521, and cas. cit., and other authorities as to protests cited on our brief in *Origet* v. *Hedden*, No. 19 of this term, p. 8.) The other questions to Hirsh relate to matters discussed in

Points II and IV, *supra*. The question as to Schoenfeld at page 62 is objectionable for the reasons stated in Point IV, *supra*, as are the questions asked of Mr. Eames at page 90 and Mr. Brower at page 95. The questions asked of Mr. Hoesly, pages 93 and 94, are also an attempt to review the valuation of the appraisers.

It is respectfully submitted that the judgment should be affirmed.

EDWARD B. WHITNEY,
Assistant Attorney-General.

LACOMBE, J. (orally):

When attention was first called to section 9 of the act of 1883, I was of the opinion that it required, in cases where it applied, the determination of the cost of each particular bale of goods upon which duty was to be assessed. In view, however, of the circumstance that most of the goods referred to in section 9 are such as are received and disposed of in the United States by agents only, who frequently, if not universally, are without full knowledge as to all the items entering into the cost of production; and further, in view of the fact that if the section were thus interpreted every single importation might become a subject of contest between the United States and the importer, in which the cost of the goods was to be determined by a jury; and further, in view of the fact that such a method of determination of the dutiable value of imports is contrary to the entire scheme of the tariff acts from the beginning, I have reached the conclusion that section 9 was not intended to require a determination as to the cost of each specific bale, or cask, or box of goods; that it requires only a determination, estimation, or ascertainment of what the value of goods of the kind imported was in the places whence they came at the time of exportation. That is to be determined, of course, as all other general questions are determined, by an investigation into all such matters as will give the appraisers light upon the subject before them—is in fact an appraisement, and should be treated as, under the decisions, appraisements are generally treated; that is, regarded as final, except in the case of reappraisement.

While upon this section it is to be noted that what is to be determined is not the expense to which any particular

individual is put, but the whole expense of manufacturing, preparing, and putting up such merchandise, whether such expense is borne by one individual or by several. This requires a statement broad enough to cover not only the cost and value of the raw materials entering into the completed product, and the other items which the importer in this case has specifically stated, to wit, stitching, bleaching, cutting off, etc., but also other items which are certainly not here stated by the importer, nor specifically, as to these goods, by any one else. Among these items last referred to may be included the expense of keeping the money invested in the raw material tied up until the product is completed; the expense of insuring the raw material while in the hands of the various individuals who are working upon it in order to produce the finished product; the cost of the services of individuals who move this material to and fro between the different hands that work upon it, who, in each stage of the process of manufacture, examine and oversee it in order to determine if it is being properly made. All these items were not included in the statement made by the importer upon the entries or invoices in this case.

I am, however, of the opinion—and that I consider the controlling point of this case—that this importation is not the kind of importation contemplated by section 9 at all. What section 9 is evidently intended to provide for is the case where an article made in a foreign country is not sold there, but is brought to the United States for sale. Such does not appear to be the case here. So far as the evidence shows, anyone can go to St. Gall, and can there buy these very cotton embroideries, not precisely of the same pattern as Mr. Muser's, but he can get a selection from a large variety of assorted patterns, and, upon paying the cost of the cloth, stitching, bleaching, cutting up, and boxing, and the additional charge, he can obtain these goods in St. Gall. He may have to wait for a week, or three weeks, or five or six weeks, but the title to the